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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 IN  
RESPONSE TO THE COURT’S APRIL  
22, 2022, PRELIMINARY APPROVAL  
CHECKLIST AND HEARING  
CONDUCTED ON APRIL 25, 2022**

Date: May 11, 2022  
Time: 9:30 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 of the agreement  
3 the parties negotiated to settle this putative class and PAGA action. On October 19, 2021, this  
4 Court issued a checklist with guidance and seeking clarification regarding the settlement. The  
5 court held a conference on October 26, 2021 and scheduled another hearing on the motion for  
6 April 25, 2022. In advance of that hearing, Plaintiffs made a supplemental submission April 4,  
7 2022. Then on April 22, 2022, the Court issued another checklist which the parties and the Court  
8 discussed at the April 25 hearing. At conclusion of the hearing, the parties committed to revising  
9 their settlement papers and the Court scheduled a further conference for May 11, 2022. Plaintiffs  
10 now submit a revised settlement agreement (“Settlement Agreement” or “SA,” attached to the  
11 Second Supp. Decl. of George A. Hanson (“Hanson Decl.”), Ex. A), a redlined version that  
12 identifies changes to the Settlement Agreement submitted on April 4, 2022 (Hanson Decl., Ex.  
13 B), this Memorandum responding to the Court’s April 22, 2022, checklist, and additional  
14 supporting evidence as outlined below. Plaintiffs have endeavored to incorporate all of the Court’s  
15 guidance and to address all of the Court’s questions and respectfully request that the settlement  
16 be granted preliminary approval.

17 **SUMMARY OF KEY SETTLEMENT TERMS**

18 The key features of this class settlement are summarized as follows:

19 Settlement Fund

20 Total cash settlement amount of **\$23,150,000** allocated as follows (Hanson Decl. ¶ 9):

- 21 • **\$3,150,000** DIRECTV has already paid class members in \$2,250 checks sent to  
22 technicians as part of the Individual Settlement Program initiated in August 2020 (SA ¶27;  
Hanson Decl. ¶ 10)
- 23 • Approximately **\$11,834,105** additional cash distributed to class members according to an  
24 equitable distribution formula (described below) (Hanson Decl. ¶ 11).
- 25 • **\$150,000** in settlement of PAGA claims with 75% to the California Labor and Workforce  
26 Developmental Agency and 25% to PAGA group members (SA ¶ 31; Hanson Decl. ¶ 14)
- 27 • Plaintiffs’ attorney’s fees, subject to Court approval, not to exceed **\$7,715,895** (SA ¶ 28;  
Hanson Decl. ¶ 15)
- 28 • Plaintiffs’ costs and expenses not to exceed **\$250,000** (SA ¶ 28; Hanson Decl. ¶ 16)

- Settlement administration costs up to **\$40,000** (SA ¶30; Hanson Decl. ¶ 17)
- Incentive awards to the two representative plaintiffs totaling **\$10,000** (\$5,000 each) (SA ¶ 29; Hanson Decl. ¶ 18)

No portion of the \$23,150,000 total settlement amount will ever revert back to DIRECTV. (SA ¶ 27; Hanson Decl. ¶ 19).

Scope of the Class

The total number of eligible class members is approximately 2,300 and is ascertainable from DIRECTV’s work order management system which tracks unique technician identification numbers, technician names and all work orders assigned to technicians during the period covered by the settlement. (Hanson Decl. ¶ 20).

Average Payout

Measured against the total net settlement fund of \$14,984,105, the average payout to class members is approximately **\$6,515**. Accounting for the amounts already paid through DIRECTV’s individual settlement program, the net **additional** payout to class members will average **\$5,143**. Because the allocation formula is pro rata based on work orders completed, longer-tenured technicians who completed many works orders will receive considerably higher amounts. (Hanson Decl. ¶ 21).

Distribution Formula

The formula for distributing the additional approximate \$11,834,105 in settlement funds to class members is designed to be as fair as possible and has several key components, including: 1) a base payment of \$250 to all class members (to ensure all class members receive some meaningful benefit in exchange for a release); 2) a payment of \$2,250 to class members who did not receive payments as part of DIRECTV’s individual settlement program to place them on equal footing with class members who have already received \$2,250; and 3) a pro rata distribution formula according to shares based on work orders performed to ensure that settlement benefits are commensurate with the quantity of work performed (i.e. long-tenured class members who performed many work orders receive proportionally more than short-tenured class members who performed few work orders). Class members who did not cash the \$2,250 check as part of

1 DIRECTV’s Individual Settlement Program will receive two (2) shares per completed work order.  
2 This weighting of shares accounts for the fact that these class members arguably have not already  
3 released their claims. Class members who cashed a check (and consequently may have released  
4 claims) as part of the Individual Settlement Program will receive one (1) share per completed  
5 work order. (SA ¶ 31.c; Hanson Decl. ¶ 22).

6 Similarly, 25% of the \$150,000 PAGA Settlement Amount (*i.e.*, \$37,500) will be  
7 distributed to those class members who performed work orders during the PAGA period  
8 according to a pro rata distribution formula based on work orders performed to again ensure that  
9 settlement benefits are commensurate with the quantity of work performed (*i.e.*, longer-tenured  
10 class members who performed many work orders receive proportionally more than shorter-  
11 tenured class members who performed few work orders). (SA ¶ 31.b; Hanson Decl. ¶ 23).

#### 12 Limited Release

13 The release of claims by settlement class members is limited to only those claims that  
14 were or could have been alleged based on the facts set forth in the operative complaint. (SA ¶32  
15 (“For the avoidance of doubt, the scope of the Settlement Group Member Release extends to but  
16 is limited to those claims that were or could have been alleged based on the facts set forth in the  
17 operative Complaint.”); Hanson Decl. ¶ 24).

#### 18 Content of Class Notice

19 The notice will attach a settlement information sheet that, among other things, will inform  
20 class members:

- 21 • whether they participated in DIRECTV’s individual settlement program and have already  
22 received \$2,250
- 23 • the technician identification number(s) associated with the class member in DIRECTV’s  
24 data
- 25 • the number of work orders closed by the class member during the covered period
- 26 • the dollar amount of the class member’s settlement allocation
- 27 • a process for disputing work order data and the allocation, and
- 28 • the settlement website where additional information about the settlement will be available

1 (Hanson Decl. ¶ 25).

2 In addition to the information spreadsheet, the notice fully and accurately describes the  
3 litigation, the scope of the release, and discloses other material terms of the settlement. The notice  
4 also informs class members they have the right to (i) appear at the final approval hearing, (ii) opt-  
5 out of the settlement (during the latter of the 60-day notice period, within 30 days of receiving  
6 notice or within 30 days of self-identifying as a class member provided the objection is received  
7 30 days prior to the final approval hearing), and (iii) object to the settlement. (Hanson Decl. ¶ 26).

8 Notice Program

9 While DIRECTV’s work order management system comprehensively tracked technician  
10 names and work orders assigned to unique identification numbers, it was not designed to track  
11 the current addresses of technicians. As a result, the settlement includes a notice program designed  
12 to be the most effective practicable and to reach the broadest number of class members possible.

13 The notice program includes:

- 14 • direct U.S. mail notice to all class members’ last known address<sup>1</sup>
- 15 • notice to email addresses for approximately 70% of class members (the settlement  
16 administrator confirms it is able to track delivered emails including whether a class  
17 member opened the email)
- 18 • notice published in three trade journals known to be commonly reviewed by class  
19 members
- 20 • notice through Facebook advertising targeting DIRECTV independent contractor  
21 technicians in California during the covered period, and
- 22 • notice through a settlement website.

23 Class Counsel anticipates that the initial notice will reach 70-80% of class members who account  
24 for 90% or more of the allocated settlement funds. (Hanson Decl. ¶ 27).

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27 <sup>1</sup> The class members’ addresses are currently known to be valid for at least 61% of class members.  
28 In addition, the settlement administrator will run a check of the class members’ addresses against  
those on file with the U.S. Postal Service’s National Change of Address List (“NCOA”) prior to  
the initial mailing.

1 Self-Identification Period

2 Mindful that accurate mailing addresses are not currently available for all eligible class  
3 members, the settlement includes a 120-day self-identification period after the first payment  
4 before final funds are distributed so that as many class members as possible are identified and  
5 receive their share of the settlement fund. In addition to the formal notice program, and in the  
6 experience of Class Counsel who have represented technicians classified as independent  
7 contractors for more than a decade, many eligible class members will receive constructive notice  
8 of the settlement through word of mouth and come forward to be identified and receive their  
9 settlement share. (Hanson Decl. ¶ 28).

10 First and Second Payments

11 The net settlement amount will be paid to class members in two separate payments. The  
12 first payment will be made 14 days after the settlement becomes effective. All class members  
13 with valid addresses (*i.e.*, those who cashed checks in DIRECTV’s Individual Settlement  
14 Program, those whose mailed notice was not returned as undeliverable, and those who have  
15 updated their mailing address or self-identified prior to the first payment date with the settlement  
16 administrator) will be sent their allocated shares under the distribution formula. The allocated  
17 shares of class members who do not have valid addresses identified will be reserved until the  
18 second payment. (SA ¶ 31; Hanson Decl. ¶ 29).

19 One hundred fifty (150) days after the first payment, a second and final payment will be  
20 made to class members. (SA ¶¶ 16, 48). The second payment will consist of (1) a pro rata  
21 distribution of the PAGA settlement amount to PAGA settlement group members, (2) the  
22 allocated portion of the net settlement not paid during the first payment (*i.e.*, allocations to class  
23 members who did not initially have valid addresses) and (3) any amounts from checks sent on the  
24 first payment that were not cashed after 90 days. The amounts in (2) and (3) will be redistributed  
25 to (i) class members who self-identified after the first payment date, and (ii) to class members  
26 who did cash their settlement checks after the first payment. (SA ¶31.d). The redistribution will  
27 **first** pay newly located class members their pro rata shares under the work order distribution  
28 formula. (*Id.*). Then the redistribution will pay to **all** located class members the remaining net

1 settlement amounts allocated on a pro rata basis under the work order distribution formula. (*Id.*;  
2 Hanson Decl. ¶30).

### 3 Payment to Legal Aid at Work

4 After 90 days have passed since the mailing of the second payment, the balance remaining  
5 from any uncashed checks will be distributed to Legal Aid at Work—a California-based not for  
6 profit representing low-wage workers who are victims of wage-and-hour violations in California.  
7 Because the final second payments will only be mailed to class members who are known to be  
8 expecting a check either because they cashed their First Payment check and/or they self-identified  
9 as being a class member, and because the checks mailed will average more than \$5,000, Class  
10 Counsel believes the final tally of uncashed checks will be very small and any payment to Legal  
11 Aid at Work will be very modest. (Hanson Decl. ¶ 31).

## 12 **DISCUSSION OF CHECKLIST ITEMS**

13 Set forth below, in order, is Plaintiffs’ discussion of the items identified in the Court’s  
14 April 22, 2022, Checklist.

### 15 **I. Scope of Release**

#### 16 **A. Released Parties**

17 The parties have revised the proposed Settlement Agreement and changed “employees”  
18 to “managers” to make clear that the release does not extend to others in the class. (SA ¶ 32;  
19 Hanson Decl. ¶ 32).

#### 20 **B. PAGA Release**

21 The Settlement Agreement has been revised to replace “Aggrieved Employees” with  
22 “PAGA Settlement Group Members.” (SA ¶ 33; Hanson Decl. ¶ 33).

### 23 **II. Settlement Distribution**

24 The parties’ settlement calls for two separate payments to class members. Heeding the  
25 Court’s concerns, the settlement agreement has been modified to make the timing and process for  
26 making the two payments clearer. (SA ¶¶ 6, 7, 16 and 48; Hanson Decl. ¶ 34).

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**A. Timing of Initial Distribution / Close of Appeal Period**

The Settlement Agreement has been revised to confirm that the First Payment will key off the Effective Date and will occur after the expiration of any objections and appeals. Specifically, the First Payment will be made 14 days after the Effective Date (SA ¶ 7) and the Effective Date has been defined as the date three conditions are met: (1) the settlement is funded, (2) the Court grants final approval, **and** (3) five days have elapsed after the deadline for any objector to appeal has expired or any timely appeal has been resolved. (*Id.*; Hanson Decl. ¶ 35).

**B. Calculating Pro Rata Shares for the First and Second Payments**

In its April 22, 2022 checklist the Court inquired: “How will the settlement administrator know how much to pay each class member until it knows how many total class members there are?” As explained above, the scope of the class and the identity of class members is currently known through comprehensive data in DIRECTV’s work order management system that tracks technician names, technician identification numbers and work order history. Under the distribution formula (SA ¶ 31.c) the administrator will be able to run settlement allocations for all class members after preliminary approval and before notice goes out. The settlement then provides for a two-step process of sending settlement checks first to class members with known valid addresses and second to those who are located during the notice and self-identification periods as described above. For those class members for whom the settlement administrator does not have a valid address at the time of the First Payment, those funds will be held until the Second Payment (SA ¶¶ 31, 48; Hanson Decl. ¶ 36).

**C. Self-Identifying and Objecting / Opting Out**

The agreement has been revised to add that, in addition to objecting or opting-out within the 60 day Notice Period or within 30 days of receiving the Class Notice Packet, self-identifying class members may also timely object or opt-out “within 30 days of self-identifying as a member of the Settlement Class” provided the notice of objection or opt-out is received 30 days before the Final Approval Hearing Further, anyone will be permitted to appear and be heard at the Final Approval Hearing. (SA ¶ 41.a–b; Hanson Decl. ¶ 37).

1 To make the class administrable, all class members including self-identifiers, must object  
2 or opt-out before final approval. (SA ¶ 41). But to give class members every reasonable  
3 opportunity to be heard and make an informed decision, the parties have provided for an extensive  
4 notice period, with comprehensive efforts across U.S. Mail, electronic mail, Facebook ads, a  
5 settlement website and publications in trade journals, to notify putative class members of the  
6 settlement and their rights in advance of the final approval hearing. (SA ¶ 40; Hanson Decl. ¶¶  
7 38).

8 Importantly, and unlike many class settlements, even if class members do not object or  
9 opt out before the final approval hearing, they may still receive the benefits of the settlement if  
10 they self-identify up to 120 days after the First Payment. (SA ¶ 43; Hanson Decl. 39).

11 Given these provisions and safeguards, Plaintiffs submit that this settlement satisfies any  
12 due process concerns under California law. *See Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 984,  
13 445 P.3d 626, 645–46 (2019) (“due process does not invariably require that personal notice be  
14 directed to all members of a class in order for a class action to proceed, or for that matter that an  
15 individual member of a certified class must receive notice to be bound by a judgment.”) (citations  
16 omitted).

### 17 **III. Settlement Amount**

18 For clarity, the Settlement Agreement has been revised to remove “Release of Claims” as  
19 that is not a defined term in the agreement and now provides “the releases as set forth below.”  
20 (SA ¶ 27; Hanson Decl. ¶ 40).

### 21 **IV. Class Data**

22 To ensure that any appeal deadlines have expired and the entire class is paid before  
23 information is destroyed or returned, the Settlement Agreement has been revised to provide that  
24 the deadline for returning or destroying confidential information is “within 30 days after both the  
25 conclusion of any appeal period and the final payment(s) under the terms of this settlement have  
26 been tendered.” (SA ¶ 51; Hanson Decl. ¶ 41).

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1 **V. Notice Administration**

2 **A. Best Notice Practicable**

3 As noted above, Class Counsel anticipates that the initial notice will reach 70–80% of  
4 class members who account for 90% or more of the allocated settlement funds. The California  
5 Supreme Court has recently confirmed that class plaintiff “need only provide meaningful notice  
6 in a form that ‘should have a reasonable chance of reaching a substantial percentage of the class  
7 members.’” *Noel*, 7 Cal.5th at 983. That said, comprehensive notice to all members of the putative  
8 class presents some challenges here because DIRECTV did not directly engage the technicians at  
9 issue in this case. Rather, DIRECTV engaged third party entities, and those third party entities  
10 recruited and engaged the technicians. And it was the third party entities that primarily or  
11 exclusively interfaced with the technicians. In fact, it was Plaintiffs’ position in the litigation that  
12 DIRECTV purposefully distanced itself from the technicians to support its position that the  
13 technicians were not DIRECTV’s employees, but only the employees of the third-party entities.  
14 (Hanson Decl. ¶ 42).

15 Not only was DIRECTV one step removed from the technicians themselves, but the class  
16 period dates back to October 1, 2011—more than 10 years ago. While some technicians  
17 performed DIRECTV work for years at a time, a significant number performed work much more  
18 transiently—some for only weeks or months at a time. Thus, many class members have had no  
19 interaction with DIRECTV for many years, and some for more than a decade. (Hanson Decl. ¶  
20 43).

21 Given this context, the parties have agreed to engage in vigorous efforts to locate as many  
22 class members as possible and notify them of the settlement.

- 23 • DIRECTV engaged in a comprehensive campaign, as part of its Individual  
24 Settlement Program, to track down and identify putative class members. This  
25 included tireless efforts by DIRECTV’s counsel and their vendors, and included  
26 not only traditional skip tracing and other efforts to update contact information,  
27 but also offers of monetary rewards to technicians who recruited and informed  
28 DIRECTV of other technicians for whom DIRECTV did not have contact

1 information (*see e.g.* Ex. 4 to the October 27, 2020, Hanson Declaration in Support  
2 of Plaintiffs’ Motion for Protective Order and Request for Judicial Notice”). The  
3 results of DIRECTV’s efforts will be provided to the Settlement Administrator  
4 and used to give notice of the Settlement Agreement before the final approval  
5 hearing (*see* SA ¶ 39)

- 6 • Plaintiffs have also engaged in their own investigation to identify putative class  
7 members as part of their efforts to prosecute this case and counter DIRECTV’s  
8 Individual Settlement Program, this information will also be provided to the  
9 Settlement Administrator and used to provide notice of the Settlement Agreement  
10 before the final approval hearing (April 4, 2022, Hanson Decl. ¶ 4).
- 11 • The Settlement Administrator will also (SA ¶ 40):
  - 12 ○ Use best practices to locate and confirm class members addresses,  
13 including conducting a NCOA database cross-check to update class  
14 members addresses;
  - 15 ○ Send notice by both U.S. mail and email to each class members’ most  
16 recently updated U.S. mail and electronic mail addresses (with ability to  
17 track if emails were delivered and opened);
  - 18 ○ Establish a settlement website that contains all pertinent information and  
19 documents related to the settlement, including a form by which class  
20 members may identify themselves;
  - 21 ○ Provide notice through Facebook, which will target individuals in  
22 California who likely performed the kind of DIRECTV work at issue in  
23 this litigation;
  - 24 ○ Publish notice in trade publications that putative class members are likely  
25 to review. (*See also* Apr. 4, 2022, Supplemental Memo ISO Plaintiffs’  
26 Unopposed Motion for Preliminary Approval, § IX.E).

27 (Hanson Decl. ¶¶ 42–47).

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1           **B. Settlement Administrator Costs**

2           The Notice has been modified to make clear that the \$40,000 cost for settlement  
3 administration is paid out of the total settlement but not out of the amount to be distributed to the  
4 class members. (See Notice ¶ 4; Hanson Decl. ¶ 48).

5           **C. Amount to be Distributed to the Class Members**

6           The Notice has been revised, as suggested by the Court, to make clear that \$3,150,000 of  
7 the total settlement amount has already been paid to certain class members and identifies an  
8 estimate of the remaining net settlement amount to be distributed to class members. (Hanson Decl.  
9 ¶ 49).

10          **D. Social Media Notice**

11          The Facebook ad will appear substantially in the form of Exhibit 5 to the Settlement  
12 Agreement. A new mock-up of how the ad will appear on Facebook has been created and  
13 incorporated into the Settlement Agreement. (Hanson Decl. ¶ 50).

14 **VI. Notice Form**

15          **A. End Date of Class Period**

16          The Settlement Agreement (SA ¶ 4) and the Class Notice (¶ 3) have been revised to  
17 include insertion of a firm date—the date the Court grants preliminary approval—that will be  
18 inserted in the final Notice to be issued when that date is known. (Hanson Decl. ¶ 51).

19          **B. Court’s Website**

20          The Notice has been revised to indicate the Court’s website URL. (Hanson Decl. ¶ 52).

21          **C. COVID and Social Distancing Requirements**

22          The Notice has been revised to provide that because the COVID-19 situation is evolving,  
23 the Court may have social distancing and masking requirements and that the class members  
24 should consult the Court’s website. (Hanson Decl. ¶ 53).

25 **VII. Resolution of Subsequent Disputes**

26          The parties believe that mediation of any future disputes would be most efficiently  
27 resolved with the assistance of Mediator Michael Dickstein because Mr. Dickstein has worked  
28 with DIRECTV and Plaintiffs’ Counsel to resolve a number of cases analogous to this one over

