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13 (additional attorney for Plaintiff on next page)

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF RIVERSIDE**

16
17 MARCELLO IBARRA, on behalf of himself, and
all others similarly situated, and as an “aggrieved
18 employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

19
20 Plaintiff,

21 vs.

22 AIRBUS DS COMMUNICATIONS, INC., a
California corporation; and DOES 1 through 50,
23 inclusive,

24 Defendants.

Case No. RIC1722478

**FIFTH AMENDED JOINT
STIPULATION RE: CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

[Assigned for all purposes to
The Honorable Harold W. Hopp, Dept. 1]

Action Filed: November 30, 2017
Trial Date: None

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Attorney for Plaintiff MARCELLO IBARRA

1 **TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL**
2 **OF RECORD:**

3 This Fifth Amended Joint Stipulation re: Class and Representative Action Settlement
4 (hereinafter, “Stipulation” or “Settlement”) is made and entered into by and between plaintiff
5 Marcello Ibarra (“Plaintiff”), on behalf of himself and on behalf of others similarly situated; and
6 defendant Vesta Solutions, Inc., formerly known as Airbus DS Communications, Inc.
7 (“Defendant”), hereinafter collectively referred to as the “Parties.” Subject to the approval of the
8 Court, the Action is hereby being compromised and settled pursuant to the terms and conditions set
9 forth in this Stipulation. This Settlement shall be binding on Plaintiff and the class he purports to
10 represent, Defendant, and on their respective counsel, subject to the terms and conditions hereof
11 and the approval of the Court.

12 **THE PARTIES STIPULATE AND AGREE** as follows:

13 **I. DEFINITIONS**

14 1. The following terms, as used throughout this Stipulation, are defined as follows:

15 a) Action. The term “Action” shall mean and refer to the legal
16 action pending in the Superior Court of California for the County of
17 Riverside, Case No. RIC1722478, entitled *Marcello Ibarra v. Airbus DS*
18 *Communications, Inc.*

19 b) Check Cashing Deadline. The term “Check Cashing
20 Deadline” shall mean one hundred eighty (180) days after an Individual
21 Class Settlement Award is issued to a Class Member by check.

22 c) Class. The term “Class” shall mean and refer, collectively, to
23 all Class Members.

24 d) Class Counsel. The term “Class Counsel” shall refer to (1)
25 David Spivak of The Spivak Law Firm, located at 8605 Santa Monica Blvd.,
26 PMB 42554, West Hollywood, CA 90069; and (2) Walter Haines of United
27 Employees Law Group, located at 4276 Katella Ave., #301, Los Alamitos,
28 CA 90720.

1 e) Class Members. The term “Class Members” shall mean all
2 persons who worked for Defendant in non-exempt positions in the State of
3 California in Defendant’s Managed Services Support group at any time
4 during the Class Period.

5 f) Class Period. The term “Class Period” shall mean the time
6 period from November 30, 2013 to December 15, 2022.

7 g) Class Representative. The term “Class Representative” shall
8 mean and refer to plaintiff Marcello Ibarra. The term “Class Representative”
9 shall be synonymous with the term “Plaintiff.”

10 h) Court. The term “Court” shall refer to the Superior Court of
11 California for the County of Riverside, before whom the Action is pending.

12 i) Defendant. The term “Defendant” shall mean and refer to
13 Vesta Solutions, Inc., formerly known as Airbus DS Communications, Inc.

14 j) Defendant’s Counsel. The term “Defendant’s Counsel” shall
15 refer to Jack S. Sholkoff of Ogletree, Deakins, Nash, Smoak & Stewart,
16 P.C., located at 400 South Hope Street, Suite 1200, Los Angeles, CA 90071.

17 k) Document Receipt Deadline. The term “Document Receipt
18 Deadline” shall mean thirty (30) days after the Notices are mailed to Class
19 Members by the Settlement Administrator.

20 l) Effective Date. The term “Effective Date” shall mean the
21 date on which the Court’s Judgment becomes final, as further detailed in
22 Paragraph 8, herein.

23 m) Exclusion Form. The term “Exclusion Form” shall mean the
24 Election Not To Participate In (“Opt Out” From) Class Action Settlement,
25 attached hereto as **Exhibit B**.

26 n) Final Approval Date. The term “Final Approval Date” shall
27 mean the date that the Court enters the Order Finally Approving Class
28 Action Settlement and Entering Judgment, attached hereto as **Exhibit E**,

1 including any revisions required by the Court.

2 o) Final Settlement Approval Hearing. The term “Final
3 Settlement Approval Hearing” shall mean and refer to a hearing before the
4 Court to finally approve the Settlement as fair, reasonable, and adequate, as
5 further detailed in Paragraph 28, herein.

6 p) Final Settlement Papers. The term “Final Settlement Papers”
7 shall refer to and include a Motion for Final Approval of the Settlement,
8 Motion for Attorneys’ Fees and Costs, and [Proposed] Final Settlement
9 Order.

10 q) Individual Class Settlement Award. The term “Individual
11 Class Settlement Award” shall mean a Class Member’s share of the Net
12 Settlement Amount, as further detailed in Paragraph 18, subparagraph (f),
13 herein.

14 r) Individual PAGA Settlement Award. The term “Individual
15 PAGA Settlement Award” shall mean a PAGA Member’s share of the
16 portion of the PAGA Allocation to be distributed to PAGA Members, as
17 further detailed in Paragraph 18, subparagraph (g), herein.

18 s) Net Settlement Amount. The term “Net Settlement Amount”
19 shall mean and refer to the balance of the Total Class Action Settlement
20 Amount, after all Court-approved deductions for attorneys’ fees and actual
21 costs to Class Counsel, the settlement administration costs and fees, PAGA
22 Allocation, and the Class Representative’s enhancement award. The Net
23 Settlement Amount is the maximum amount that will be available for
24 distribution to Class Members.

25 t) Notice. The term “Notice” shall mean the Notice of Class
26 Action Settlement, attached hereto as **Exhibit A**.

27 u) Objection Form. The term “Objection Form” shall mean the
28 Notice of Objection Form, attached hereto as **Exhibit C**.

1 v) PAGA Allocation. The term “PAGA Allocation” means the
2 amount of \$10,000.00 to be allocated to claims arising under the Labor Code
3 Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*
4 (“PAGA”) in settlement of alleged but disputed PAGA civil penalties,
5 except as described in Paragraph 13. Pursuant to PAGA, 75 percent of the
6 PAGA Allocation, or Seven Thousand Five Hundred Dollars (\$7,500.00),
7 shall be paid to the LWDA, with the remaining 25 percent, or Two
8 Thousand Five Hundred Dollars (\$2,500.00), distributed to PAGA Members.
9 The PAGA Allocation shall be deducted from the Total Class Action
10 Settlement Amount prior to calculation of the Net Class Action Settlement.

11 w) PAGA Members. The term “PAGA Members” shall mean all
12 persons who worked for Defendant in non-exempt positions in the State of
13 California in Defendant’s Managed Services Support group at any time
14 during the PAGA Period.

15 x) Aggrieved Employee. The term “Aggrieved Employee” shall
16 mean all Class Members who worked for Defendant in non-exempt positions
17 in the State of California in Defendant’s Managed Services Support group at
18 any time during the PAGA Period.

19 y) PAGA Period. The term “PAGA Period” shall mean the time
20 period from November 30, 2016 to the Preliminary Approval Date, except as
21 provided in Paragraph 13, below.

22 z) PAGA Released Claims. Plaintiff releases all claims for civil
23 penalties that could have been sought by the Labor Commissioner for the
24 violations identified in Plaintiff’s pre-filing letter to LWDA. While Plaintiff
25 does not release any Aggrieved Employee’s claim for wages or damages, the
26 Class Members, even if they are also Aggrieved Employees, release their
27 claims for certain unpaid wages if they do not request exclusion from this
28 Settlement. Aggrieved Employees release Defendant from PAGA Released

1 Claims.

2 aa) Parties. The term “Parties” shall mean and refer collectively
3 to plaintiff Marcello Ibarra, on behalf of the Class, and Defendant.

4 bb) Plaintiff. The term “Plaintiff” shall mean and refer to
5 plaintiff Marcello Ibarra. The term “Plaintiff” shall be synonymous with the
6 term “Class Representative.”

7 cc) Preliminary Approval Date. The term “Preliminary Approval
8 Date” shall mean the date that the Court enters the Preliminary Approval
9 Order, attached hereto as **Exhibit D**, including any revisions required by the
10 Court.

11 dd) Release End Date. The term “release end date” shall be
12 December 15, 2022.

13 ee) Released Parties. The term “Released Parties” shall mean
14 and refer to Defendant; Plant Holdings, Inc.; AIRBUS U.S. Space &
15 Defense, Inc. (formerly known as Airbus Defense and Space, Inc.); Airbus
16 Group, Inc.; Airbus Americas, Inc.; Airbus SAS; Airbus SE; Motorola
17 Solutions, Inc.; Vesta Solutions of Virginia, Inc.; and Vesta Solutions
18 Communications Corp.; and any of their officers, directors, employees, and
19 agents.

20 ff) Settlement Administrator. The term “Settlement
21 Administrator” shall refer to Phoenix Settlement Administrators, or any
22 other third-party class action Settlement Administrator agreed to by the
23 Parties and approved by the Court for the purposes of administering this
24 Settlement.

25 gg) Stipulation. The term “Stipulation” shall refer to this
26 document, entitled “Fifth Amended Joint Stipulation re: Class and
27 Representative Action Settlement,” including all exhibits attached hereto.

28 hh) Total Class Action Settlement Amount. The term “Total

1 Class Action Settlement Amount” shall mean Three Hundred Thousand Two
2 Hundred Fifty Four Dollars and Twenty Six Cents (\$300,254.26.). This is
3 the maximum possible amount that may be paid by Defendant to resolve this
4 Action, with the additional amount to be paid by Defendant for its share of
5 payroll taxes on the settlement funds, as described in Paragraph 20,
6 subparagraph (i).

7 ii) The Total Class Action Settlement Amount is a common
8 fund, non-reversionary amount.

9 2. Date Of This Stipulation. This Stipulation is made as of the date set forth below by
10 and between Plaintiff, on behalf of himself and the Class, on the one hand, and Defendant, on the
11 other hand, subject to the approval of the Court.

12 **II. BACKGROUND OF THE LEGAL ACTION**

13 3. Brief Procedural History. Plaintiff filed the instant Action, entitled *Marcello Ibarra,*
14 *et al. v. Airbus DS Communications, Inc.*, in Riverside County Superior Court on November 30,
15 2017 (the “Complaint”). In the Complaint, Plaintiff alleged causes of action for: (1) Failure to
16 Provide Rest Breaks; (2) Failure to Provide Meal Periods; (3) Failure to Pay All Wages Earned for
17 All Hours Worked; (4) Wage Statement Penalties; (5) Waiting Time Penalties; and (6) Unfair
18 Competition. On December 28, 2017, Plaintiff filed a First Amended Complaint (the “First
19 Amended Complaint”) alleging those same claims, plus adding a cause of action for civil penalties
20 under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*
21 (“PAGA”). On January 26, 2018, Defendant filed an Answer to Plaintiff’s First Amended
22 Complaint. Defendant generally denies Plaintiff’s claims, including the allegations in the
23 Complaint and First Amended Complaint.

24 4. Mediation And Settlement Agreement Reached By The Parties. On April 17, 2019,
25 the Parties and their counsel participated in a formal mediation session in Los Angeles, California
26 before Mr. Tripper Ortman, Esq. At the conclusion of the April 17, 2019 mediation session, the
27 Parties, by and through their counsel, reached an agreement to resolve the Action pursuant to terms
28 set forth in a Memorandum of Understanding. This Stipulation formalizes the settlement

1 agreement reached by the Parties.

2 5. Investigation. The Parties have conducted a detailed and comprehensive
3 investigation of the claims asserted against Defendant and of the applicable law. The Parties
4 engaged in informal discovery to prepare for mediation, which included: (a) analysis by the Parties
5 of certain records, data, and policies pertaining to Plaintiff, Class Members, and the claims asserted
6 in the Action; (b) research of the law applicable to Plaintiff's claims and Defendant's affirmative
7 defenses, as well as the damages alleged by Plaintiff; (c) examination and analysis of information
8 and documents; and (d) consideration of information disclosed at and in connection with
9 mediation.

10 6. Benefits Of Settlement. The Class Representative and Class Counsel recognize the
11 uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in
12 such litigation. The Class Representative and Class Counsel also are aware of the burdens of proof
13 necessary to establish liability for the claims asserted in the Action, the defenses thereto, and the
14 difficulties inherent in the Action. Based on the foregoing, the Class Representative and Class
15 Counsel have determined that the Settlement set forth in this Stipulation is a fair, adequate, and
16 reasonable settlement, and that it is in the best interest of the Class Members. Based on their
17 discovery and investigation, Class Counsel has determined that this Settlement is well within the
18 range of reasonableness. The Settlement as embodied and documented in this Stipulation is the
19 product of extensive, arms-length negotiations, and is not the product of collusion. Likewise,
20 Defendant has concluded that any further defense of this Action would be protracted and
21 expensive. Substantial amounts of time, energy, and resources have been, and will continue to be,
22 devoted to the defense of the Action unless this Settlement is made. Therefore, Defendant has
23 agreed to settle, in the manner and upon the terms set forth in this Stipulation, in order to fully and
24 finally resolve the claims asserted in the Action.

25 7. Denial Of Wrongdoing. Defendant has denied and continues to deny each of the
26 claims asserted by Plaintiff in this Action, as referenced in Paragraph 3, above. Defendant has
27 asserted and continues to assert defenses to the Class Representative's claims, and has expressly
28 denied and continues to deny any wrongdoing whatsoever. Neither this Stipulation nor any action

1 taken to carry out the Settlement may be construed as an admission by Defendant of any fault,
2 wrongdoing, or liability whatsoever.

3 **III. DATE OF SETTLEMENT**

4 8. Effective Date. The Court’s Judgment shall become final when all of the following
5 events have occurred:

- 6 a) The Stipulation has been executed by all Parties, Class Counsel, and
7 Defendant’s Counsel;
- 8 b) The Court has given preliminary approval to the Settlement;
- 9 c) The Court has held a Final Settlement Approval Hearing and has entered a
10 Final Order and Judgment approving the Stipulation (the “Judgment”); and
11 d) In the event that written objections are submitted prior to the Final
12 Settlement Approval Hearing which are not later withdrawn, upon the later of:
 - 13 i. The date of final affirmance on an appeal of the Judgment; the
14 expiration of the time for a petition to review the Judgment; and, if
15 review is granted, the date of final affirmance of the Judgment
16 following review; or
 - 17 ii. The date of final dismissal of any appeal from the Judgment or the
18 final dismissal of any proceeding to review the Judgment; or
 - 19 iii. If no appeal is filed, the expiration date for filing any appeal from the
20 Judgment.
- 21 e) In the event that no written objections are submitted prior to the Final
22 Settlement Approval Hearing, or that any submitted written objections are withdrawn prior
23 to the Final Settlement Approval Hearing, the Court’s Judgment shall become final when
24 the conditions set forth in subparagraphs (a) through (c) of this Paragraph 8, hereinabove,
25 have been fulfilled.

26 **IV. CLASS MEMBERS INCLUDED IN SETTLEMENT**

27 9. Scope Of The Class. The Class is defined as follows: “All persons who worked for
28 Defendant in non-exempt positions in the State of California in Defendant’s Managed Services

1 Support group at any time during the Class Period.”

2 10. Class Members’ Objections To This Settlement. Any Class Member may object to
3 the Settlement by mailing or faxing the written objection to Settlement Administrator on or before
4 the Document Receipt Deadline. The written objection may, but need not, be in the form of the
5 Objection Form attached hereto as **Exhibit C**. Any Class Member who does not object to the
6 Settlement in the manner provided for in this Stipulation may not appeal the Final Judgment. In
7 the event that the Court approves this Settlement notwithstanding the objections of any Class
8 Members, Class Members who object to the Settlement will nonetheless be bound by the
9 Settlement. Class Members who have opted out of the class action portion of the Settlement as
10 detailed in Paragraph 20, subparagraph (d), herein do not have standing to object to the class action
11 portion of the Settlement or to file an appeal for purposes of Paragraph 8.

12 11. Class Members’ Exclusion (“Opt-Out”) From This Settlement. Any Class Member
13 may request to be excluded (“opt-out”) from the class action portion of the Settlement by faxing or
14 mailing a written Request for Exclusion to the Settlement Administrator as prescribed in Paragraph
15 20, subparagraph (d), herein. The Request for Exclusion may, but need not, be in the form of the
16 Exclusion Form attached hereto as **Exhibit B**. Each Class Member who submits a valid Request
17 for Exclusion shall not be bound by the class action portion of the Settlement. PAGA Members
18 may not opt out from the portion of the Settlement pertaining to the settlement of claims for civil
19 penalties pursuant to PAGA. All PAGA penalties shall be distributed among all Aggrieved
20 Employees, even those who opt out of the class settlement.

21 12. Blow-Up Provision. Defendant reserves the right to revoke this Stipulation and the
22 Settlement provided for herein if ten percent (10%) or more of Class Members opt out of the class
23 action portion of the Settlement by submitting timely and valid Requests for Exclusion in the
24 manner set forth in Paragraph 20, subparagraph (d), below, in which case this Stipulation will not
25 have any force and/or effect. Class Counsel and the Class Representative agree not to oppose any
26 application by Defendant and/or its Counsel that is consistent with this paragraph. Defendant shall
27 make its election within seven (7) calendar days of receipt from the Settlement Administrator of
28 the total percentage of opt-outs. If the Settlement is voided, no payment will be made by

1 Defendant to Plaintiff, any Class Member, or Class Counsel; and all Parties and third parties
2 referenced in this Stipulation will bear their own costs, fees, and expenses associated with the
3 Action. However, Defendant will be responsible for the costs incurred by the Settlement
4 Administrator.

5 13. Class Membership. Defendant represents that the number of Class Members as of
6 December 15, 2022 was approximately 104.

7 14. Finality Of Settlement. As of the Effective Date, the Settlement contained herein,
8 including the Release outlined below, shall be final and binding upon all PAGA Members and all
9 Class Members who do not exclude themselves from the class action portion of the Settlement.

10 **V. RELEASES**

11 15. Releases By Plaintiff, PAGA Members, And Class Members.

12 a) As of the Effective Date, Plaintiff and Class Members (including the Class
13 Representative) release the Released Parties from the following, collectively referred to as
14 the “Released Class Claims”:

15 All claims stated in the Complaint or the First Amended Complaint and
16 those based solely upon the facts alleged in the Complaint or the First
17 Amended Complaint that arose during the Class Period.

18 b) As of the Effective Date, Plaintiff releases Defendant
19 (“Released Party”) from PAGA Released Claims during the PAGA Period.
20 Plaintiff releases all claims for civil penalties that could have been sought by
21 the Labor Commissioner for the violations identified in Plaintiff’s pre-filing
22 letter to LWDA. While Plaintiff does not release any Aggrieved Employee’s
23 claim for wages or damages, Class Members release their claims for certain
24 unpaid wages if they do not request exclusion from this Settlement. .
25 Moreover, Aggrieved Employees release Defendant from PAGA Released
26 Claims.

27
28 16. General Release By The Class Representative. In addition to the release set forth in

1 the above Paragraph 15, the Class Representative makes the additional general release of all of his
2 individual claims as follows: The Class Representative releases the Released Parties from any and
3 all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights, or
4 liabilities of any nature and description whatsoever, known or unknown, that the Class
5 Representative individually may possess against the Released Parties arising from the Class
6 Representative's employment with Defendant. The Class Representative hereby acknowledges
7 that, upon receiving the sums provided to him pursuant to this Stipulation, he will have received all
8 potential wages, damages, and penalties owing to him by Defendant, and, further, that he is not
9 owed any additional wages, penalties, or damages from Defendant.

10 The Class Representative also agrees to expressly waive the provisions of California Civil
11 Code section 1542, which provides as follows:

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

16 The Class Representative's general release shall cover the time period from November 30, 2013 up
17 to the Effective Date.

18 **VI. AMOUNT AND DISTRIBUTION OF SETTLEMENT**

19 17. **Settlement Amount.** The Total Class Action Settlement Amount shall be Three
20 Hundred Thousand Two Hundred Fifty Four Dollars and Twenty Six Cents (\$300,254.26).
21 Defendant will pay the Total Class Action Settlement Amount within **thirty (30) calendar days**
22 **following the Effective Date** by wiring that amount to the Settlement Administrator. Under no
23 circumstances will Defendant be obligated to pay more than the amount of \$300,254.26 as a result
24 of this Settlement, with the limited exception of (a) the additional amount to be paid by Defendant
25 for its share of payroll taxes on the settlement funds, as described in Paragraph 20.

26 18. **Deductions From Settlement Amount.** Deductions from the Total Class Action
27 Settlement Amount, all subject to Court approval, shall be made for:

28 a) **Attorneys' Fees.** Class Counsel may apply for an award of attorneys' fees,

1 not to exceed thirty-three and one-third percent (33 $\frac{1}{3}$) percent of the Total Class Action
2 Settlement Amount, or Seventy One Thousand Six Hundred Sixty Six Dollars and Sixty
3 Seven Cents (\$71,666.67). The attorneys' fees award shall be paid from the Total Class
4 Action Settlement Amount. Defendant agrees not to oppose any such applications that are
5 consistent with this paragraph. The amount of attorneys' fees shall include all past and
6 future attorneys' fees to Class Counsel – including, without limitation, all time expended by
7 Class Counsel in defending the Settlement and securing final approval of the Settlement
8 (including any appeals thereof).

9 b) Attorneys' Costs. In addition to attorneys' fees, Class Counsel may apply
10 for an award of costs, not to exceed the sum of Twenty Three Thousand Nine Hundred
11 Dollars (\$23,900). The costs award shall be paid from the Total Class Action Settlement
12 Amount. Defendant agrees not to oppose any such applications that are consistent with this
13 paragraph. The amount of costs shall include all past and future costs associated with this
14 Action – including, without limitation, all costs expended by Class Counsel in defending
15 the Settlement and securing final approval of the Settlement (including any appeals
16 thereof).

17 c) Class Representative's Enhancement Award. Class Counsel may apply for
18 an enhancement award to the Class Representative in an amount not to exceed Five
19 Thousand Dollars (\$5,000.00). The enhancement award shall be paid from the Total Class
20 Action Settlement Amount. Defendant agrees not to oppose any such application that is
21 consistent with this paragraph.

22 d) Settlement Administration Costs And Fees. All actual costs for settlement
23 administration, including related accounting costs, in an amount not to exceed Seven
24 Thousand Dollars (\$7,000.00), shall be paid from the Total Class Action Settlement
25 Amount. The Parties contemplate that the Settlement Administrator shall be Phoenix
26 Settlement Administrators, or any other third-party class action Settlement Administrator
27 agreed to by the Parties and approved by the Court for the purposes of administering this
28 Settlement. To the extent actual costs for settlement administration are less than \$7,000.00,

1 those amounts will be credited to the Total Class Action Settlement Amount prior to
2 distribution of the Net Settlement Amount to Class Members. Defendant agrees not to
3 oppose any such applications that are consistent with this paragraph.

4 e) PAGA Allocation. The Parties agree to allocate Ten Thousand Dollars
5 (\$10,000.00) of the Total Class Action Settlement Amount to resolve the Class Members’
6 claims arising under PAGA (the “PAGA Allocation”). Pursuant to PAGA, 75 percent of
7 the PAGA Allocation, or Seven Thousand Five Hundred Dollars (\$7,500.00), shall be paid
8 to the State of California Labor and Workforce Development Agency (the “LWDA”), with
9 the remaining 25 percent, or Two Thousand Five Hundred Dollars (\$2,500.00), allocated to
10 PAGA Members’ Individual PAGA Settlement Awards. No PAGA Member shall be able
11 to opt-out from the PAGA Members’ portion of the PAGA Allocation.

12 f) Payment Of Individual Class Settlement Awards To Class Members. After
13 the amounts described in Paragraph 18, subparagraphs (a) through (e), above, have been
14 deducted from the Total Class Action Settlement Amount, the Net Settlement Amount shall
15 be distributed to each Class Member, in the following manner:

16 The Net Settlement Amount shall be divided by the number of aggregate qualified
17 weeks worked by all Class Members during the Class Period to produce a “Weekly
18 Settlement Value.” A “qualified week” shall be a week worked by a Class Member
19 in California in a non-exempt job position in Defendant’s Managed Services
20 Support group. Each Class Member shall be eligible to receive a settlement
21 payment in the amount of the total number of qualified weeks the Class Member
22 worked for Defendant during the Class Period multiplied by the Weekly Settlement
23 Value, less applicable withholdings, provided that the Class Member has not
24 submitted a Request for Exclusion in the manner described in Paragraph 20,
25 subparagraph (d).

26 g) Payment Of Individual PAGA Settlement Awards To PAGA Members. The
27 Settlement Administrator will calculate each PAGA Member’s Individual PAGA
28 Settlement Award by dividing the 25% of the PAGA Allocation (*i.e.*, \$2,500.00) by the

1 total number of “qualified weeks” worked by PAGA Members in the PAGA Period,
2 arriving at the PAGA Workweek Value. A “qualified week” shall be a week worked by a
3 Class Member in California in a non-exempt job position in Defendant’s Managed Services
4 Support group. The Settlement Administrator will then multiply the PAGA Workweek
5 Value by the number of qualified weeks worked by each PAGA Member during the PAGA
6 Period.

7 19. Non-Reversionary Settlement. There will be no reversion to Defendant following
8 the claims process. In the event that an Individual Class Settlement Award and/or an Individual
9 PAGA Settlement Award is paid to a Class Member or PAGA Member by check and the check is
10 not cashed on or before the Check Cashing Deadline, the amount of the Individual Class Settlement
11 Award and/or the Individual PAGA Settlement Award shall be considered unclaimed. Each
12 Individual Class Settlement Award and/or Individual PAGA Settlement Award paid to a Class
13 Member or PAGA Member but not cashed on or before the Check Cashing Deadline shall be
14 cancelled and the funds shall be redistributed pro rata by the Settlement Administrator to those
15 Class Members and PAGA Members who have cashed their checks. Each redistributed Individual
16 Class Settlement Award and/or Individual PAGA Settlement Award paid to a Class Member or
17 PAGA Member but not cashed for more than 180 days after issuance shall be paid to the California
18 State Controller’s Office Unclaimed Property Fund with an identification of the amount of
19 unclaimed funds attributable to each Class Member and PAGA Member to whom a check was re-
20 issued.

21 **VII. SETTLEMENT ADMINISTRATION**

22 20. Settlement Administrator’s Duties. The Settlement Administrator shall be
23 responsible for (a) processing the data provided by Defendant to be used in calculating Individual
24 Class Settlement Awards and Individual PAGA Settlement Awards, including the PAGA penalties
25 payment due to each PAGA Member; (b) preparing, printing, and mailing to Class Members the
26 Notice, Exclusion Form, and Objection Form (attached hereto as **Exhibits A, B, and C,**
27 respectively), as well as following up with reasonable skip tracing; (c) notifying the Parties of the
28 identity of Class Members who submit timely Requests for Exclusion; (d) calculating and mailing

1 Individual Class Settlement Awards and Individual PAGA Settlement Awards to Class Members;
2 (e) calculating and paying the employer's share of the applicable federal and state withholding
3 taxes; (f) filing any required federal and state tax forms and related agency reporting; (g) filing any
4 required reports with the Court; and (h) any and all such other tasks as to which the Parties
5 mutually agree, or which the Court orders the Settlement Administrator to perform. The claims
6 process shall be anonymous to the extent possible.

7 Specifically, the Settlement Administrator shall perform the following duties:

8 a) Processing Of Data Provided By Defendant Regarding Class
9 Members. Upon receipt of the data provided by Defendant pursuant to
10 Paragraph 25 herein, the Settlement Administrator shall determine, for each
11 Class Member: (i) the Class Member's name, (ii) the Class Member's last
12 known address, (iii) the last four digits of the Class Member's social security
13 number, and (iv) the Weekly Settlement Value to be paid to the Class
14 Member pursuant to Paragraph 18, subparagraph (f), above.

15 b) Mailing Of Documents. Within ten (10) calendar days of
16 receipt of the database containing the information to be provided by
17 Defendant pursuant to Paragraph 25 herein, the Settlement Administrator
18 shall mail copies of (1) the Notice to all Class Members, (2) the Exclusion
19 Form, and (3) the Objection Form, by first class regular U.S. Mail, using the
20 most current mailing address information provided by Defendant and/or
21 obtained by the Settlement Administrator. The Settlement Administrator
22 will engage in address searches consistent with its normal practices in
23 administering settlements of wage claims, including skip tracing. Such
24 search efforts shall include, where necessary, using social security numbers
25 to obtain better address information and attempting to call such Class
26 Members. Any returned envelopes from this mailing with forwarding
27 addresses will be utilized by the Settlement Administrator to forward the
28 Notices to the Class Members.

1 c) Re-Mailing Of Returned Notices. Notices returned to the
2 Settlement Administrator as non-delivered shall be re-sent to the forwarding
3 address, if any, on the returned envelope. A returned Notice will be
4 forwarded only once per Class Member by the Settlement Administrator.
5 Upon completion of these steps by the Settlement Administrator, the Parties
6 shall be deemed to have satisfied their obligation to provide the Notice to the
7 affected Class Member. The affected Class Member shall remain a Class
8 Member and shall be bound by all the terms of this Stipulation and the
9 Court's Judgment.

10 d) Processing Requests For Exclusion ("Opt-Outs") From
11 Settlement. In the event that a Class Member desires to be excluded ("opts
12 out") from the class action portion of the Settlement provided herein, he or
13 she must fax or mail a written Request for Exclusion to the Settlement
14 Administrator by first class U.S. Mail, or equivalent, postage paid and
15 postmarked, by no later than the Document Receipt Deadline, which is thirty
16 (30) calendar days after the date that the Settlement Administrator originally
17 mails Notices to Class Members. To be valid, the Request for Exclusion
18 must be timely submitted and in a written format that includes (i) the Class
19 Member's name, (ii) the Class Member's address, (iii) a request for
20 exclusion from the class action portion of the Settlement, and (iv) the Class
21 Member's signature. The Request for Exclusion may, but need not, be in the
22 form of the Exclusion Form attached hereto as **Exhibit B**. The Settlement
23 Administrator shall notify Class Counsel and Defendant's Counsel of its
24 receipt of all valid Requests for Exclusion within three (3) business days
25 after having received each such Request for Exclusion and shall provide
26 copies of any exclusion forms and objection forms to Class Counsel and
27 Defendant's Counsel.

28 e) Payment Of Individual Class Settlement Awards And

1 Individual PAGA Settlement Awards. The Settlement Administrator shall
2 be solely responsible for the disbursement of the Individual Class Settlement
3 Award and Individual PAGA Settlement Award payments.

4 f) Declaration Of Due Diligence. No later than ten (10)
5 calendar days prior to the Final Settlement Approval Hearing, the Settlement
6 Administrator shall provide both Parties with a declaration of due diligence
7 to be filed with the Court. The Settlement Administrator shall file a
8 declaration concurrently with the filing of the motion for final approval,
9 authenticating a copy of every exclusion form and objection form received
10 by the administrator.

11 g) Notice to any Objecting Party. No later than ten (10) calendar
12 days prior to the Final Settlement Approval Hearing, the Settlement
13 Administrator shall give notice to any objecting party of any continuance of
14 the hearing of the motion for final approval.

15 h) Allocating Portions Of The Individual Class Settlement
16 Awards As Wages. The Settlement Administrator shall be responsible for
17 calculating the portion of each Individual Class Settlement Award to be
18 allocated as wages. Thirty-three percent (33%) of each Individual Class
19 Settlement Award shall be allocated as wages, and sixty-seven percent
20 (67%) of each Individual Class Settlement Award shall be allocated as
21 interest and penalties. 100% of each Individual PAGA Settlement Award
22 will be allocated to penalties.

23 i) Taxation Of Individual Class Settlement Awards And
24 Individual PAGA Settlement Awards. The Settlement Administrator shall
25 be responsible for paying the employer's and employees' share of federal,
26 state, and local payroll and income taxes. The portion of each Individual
27 Class Settlement Award allocated as wages shall be subject to payroll
28 withholding. The employer's share of payroll taxes shall be paid in addition

1 to the Total Class Action Settlement Amount. Appropriate withholding of
2 the employee's share of income taxes shall be deducted from each Individual
3 Class Settlement Award and each Individual PAGA Settlement Award, as
4 applicable.

5 i. Federal Tax Reporting. The Settlement Administrator shall issue an
6 IRS Form W-2 to each Class Member for the portion of the
7 Individual Class Settlement Award that is designated as wages. The
8 Settlement Administrator shall issue an IRS Form 1099 to each Class
9 Member for the portion of the Individual Class Settlement Awards
10 that is not designated as wages, as well as for the Individual PAGA
11 Settlement Award. The Settlement Administrator shall issue an IRS
12 Form 1099 to the Class Representative for any enhancement award
13 paid pursuant to Paragraph 18, subparagraph (c), above, in
14 connection with his role as the Class Representative.

15 ii. State Tax Reporting. The Settlement Administrator shall file, with
16 the California Employment Development Department ("EDD"), the
17 required reports of Personal Income Tax ("PIT") wages withheld
18 from the Individual Class Settlement Awards, as well as the amounts
19 to be paid as Unemployment Insurance ("UI"), Employment Training
20 Tax ("ETT"), and State Disability Insurance ("SDI"). For purposes
21 of this reporting, prior to disbursement of the Individual Class
22 Settlement Awards and Individual PAGA Settlement Awards, the
23 Settlement Administrator shall provide Defendant with a list of all
24 Class Members, and Defendant shall provide to the Settlement
25 Administrator the following information: (1) its Form DE 2088,
26 *Notice of Contribution Rates and Statement of UI Account*, for the
27 current calendar year (if unavailable, Defendant may provide instead
28 their California State Employer's Identification Number and its

1 applicable UI and ETT Rates); and (2) the year-to-date earnings of
2 each Class Member who received any wages from Defendant during
3 the current calendar year.

4 iii. Responsibility For Tax Obligations. All Class Members and the
5 Class Representative will be responsible for correctly characterizing
6 the compensation they receive for tax purposes and for paying any
7 taxes on the amounts received, except for the employer contributions
8 which will be handled as provided by this Stipulation. The Class
9 Members and the Class Representative agree to indemnify Defendant
10 for any liability Defendant incurs to any tax authority on account of
11 the Class Members' or the Class Representative's failures to pay all
12 taxes due on amounts they receive hereunder, except if the failure
13 results from Defendant's failure to pay its own portion of taxes due.
14 The liability of each Class Member and each Class Representative is
15 limited to the liability caused by that individual's own failure.

16 j) Mailing Of Individual Class Settlement Awards And
17 Individual PAGA Settlement Awards. Within ten (10) calendar days after
18 Defendant's transfer of funds to the Settlement Administrator, the Settlement
19 Administrator shall mail all Class Members their Individual Class Settlement
20 Awards and shall mail all PAGA Members their Individual PAGA
21 Settlement Awards. Each check issued to a Class Member or PAGA
22 Member shall remain valid and negotiable for one hundred eighty (180) days
23 from the date of issuance. Those Individual Class Settlement Awards and
24 Individual PAGA Settlement Awards not cashed by the Check Cashing
25 Deadline shall be cancelled and the funds shall be redistributed pro rata by
26 the Settlement Administrator to those Class Members and PAGA Members
27 who have cashed their checks.

28 k) Certifying The Class Members Bound By The Settlement.

1 Within fifty (50) calendar days from the Effective Date, the Settlement
2 Administrator shall file written certification with the Court with copies to
3 counsel for all Parties that all Class Members have been mailed their
4 Individual Class Settlement Awards and all PAGA Members have been
5 mailed their Individual PAGA Settlement Awards.

6 l) Payments To Class Counsel. Within ten (10) calendar days
7 after Defendant’s transfer of funds to the Settlement Administrator, the
8 Settlement Administrator shall pay the attorneys’ fees and costs, as detailed
9 in Paragraph 18, subparagraphs (a) and (b), above.

10 m) Payment Of PAGA Allocation. Within ten (10) calendar days
11 after Defendant’s transfer of funds to the Settlement Administrator, the
12 Settlement Administrator shall mail to the LWDA the State of California’s
13 allocated portion of the Court-approved PAGA Allocation, as detailed in
14 Paragraph 18, subparagraph (e), above.

15 21. Disputes Regarding The Settlement Administrator’s Performance Of Duties. All
16 disputes relating to the Settlement Administrator’s performance of its duties shall be referred to the
17 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this
18 Stipulation until all payments and obligations contemplated by this Stipulation have been fully
19 carried out.

20 **VIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY COURT APPROVAL**

21 22. Submission Of Stipulation To Court. The Parties shall promptly submit this
22 Stipulation to the Court in support of Plaintiff’s motion for preliminary approval and determination
23 by the Court as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to
24 the Court for the entry of an order substantially in the following form (the “[Proposed] Preliminary
25 Approval Order”):

26 a) Scheduling a fairness hearing on the question of whether the proposed
27 Settlement – including payment of attorneys’ fees, attorneys’ costs, appointment of the
28 Class Representative and the amount of his enhancement award, and the method of

1 determining Individual Class Settlement Awards and Individual PAGA Settlement Awards
2 to be paid to Class Members and PAGA Members, respectively – should be finally
3 approved as fair, reasonable, and adequate as to the Class;

4 b) Approving as to form and content the proposed Notice (attached as **Exhibit**
5 **A**);

6 c) Directing the mailing to Class Members of the Notice, by first class U.S.
7 Mail, pursuant to the terms specified herein; and

8 d) Preliminarily approving the Settlement, subject only to the objections of
9 Class Members and final review by the Court.

10 The [Proposed] Preliminary Approval Order to be submitted shall be the document attached hereto
11 as **Exhibit D**, unless the Court's orders during the approval process require revisions to be made.

12 Unless the Parties agree otherwise, only necessary revisions shall be made to the [Proposed]
13 Preliminary Approval Order to be submitted to the Court.

14 23. Amendment Of This Stipulation To Conform To The Court's Order. To the extent
15 the Court does not approve this Stipulation, or any term contained herein, and instead allows the
16 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the
17 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation
18 that the Court approves.

19 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL**

20 24. Timely Approval Of Documents To Be Mailed By The Settlement Administrator.
21 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all
22 settlement administration documents, including the Notice to be mailed to the Class, within four (4)
23 business days of the Settlement Administrator's request for approval.

24 25. Defendant's Provision Of Class Member Data To Settlement Administrator. No
25 later than thirty (30) calendar days following the Preliminary Approval Date, Defendant shall
26 provide the Settlement Administrator with data that is within Defendant's possession containing,
27 for each Class Member: (a) the Class Member's name; (b) the Class Member's last known address;
28 (c) the Class Member's social security number; (d) the total number of "qualified weeks" during

1 which the Class Member was employed by Defendant in California in a non-exempt job position in
2 Defendant’s Managed Services Support group during the Class period; and (e) the total number of
3 “qualified weeks” during which each PAGA Member was employed by Defendant in California in
4 a non-exempt job position in Defendant’s Managed Services Support group during the PAGA
5 Period. This Class information is confidential and not to be disclosed to anyone other than the
6 Settlement Administrator. This information shall be based on Defendant’s payroll and other
7 business records, and shall be in a format readily accessible to Defendant. **Within ten (10) calendar**
8 days of receipt of the information from Defendant, the Settlement Administrator will mail the
9 Notice to the Class Members, provided that counsel for the Parties have approved the documents
10 pursuant to Paragraph 24 herein. In the event that approval of the documents pursuant to
11 Paragraph 24 takes more than ten (10) calendar days, the Settlement Administrator shall mail the
12 Notice to the Class Members within one (1) business day of receiving approval of the documents
13 pursuant to Paragraph 24.

14 26. Disputes Arising From Settlement Administration. Any disputes arising during the
15 settlement administration process must be resolved informally by counsel for the Parties and, if the
16 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the
17 Document Receipt Deadline.

18 27. Motions By Class Counsel.

19 a) Motions Required For Final Approval Of The Settlement. Class Counsel
20 shall timely prepare, subject to Defendant’s review and right to comment, Final Settlement
21 Papers in conformance with the terms of this Settlement, including (1) a motion for final
22 approval of the Settlement; (2) a motion for award of attorneys’ fees and costs; (3) a motion
23 for the Class Representative’s enhancement award; (4) the [Proposed] Order Finally
24 Approving Class Action Settlement and Entering Judgment; and (5) any other documents,
25 petitions, or motions required to effectuate this Settlement – including, but not limited to,
26 any additional proposed orders requested by the Court. Class Counsel must submit the
27 Final Settlement Papers to Defendant’s Counsel no later than three (3) court days prior to
28 the deadline for filing the motion for final approval of the Settlement. In the event that

1 Class Counsel and Defendant's Counsel cannot resolve any dispute regarding the Final
2 Settlement Papers arising from Defendant's right to review and comment, Defendant's
3 Counsel shall submit its objections to the Final Settlement Papers to the Court before or
4 during the Final Settlement Approval Hearing.

5 b) [Proposed] Final Settlement Order. The [Proposed] Order Finally
6 Approving Class Action Settlement and Entering Judgment shall include a proposed Final
7 Order and Judgment ordering:

- 8 i. Approval of the Settlement, adjudging the terms thereof to be fair,
9 reasonable, and adequate, and directing consummation of its terms and
10 provisions;
- 11 ii. Approval of Class Counsel's application for an award of attorneys' fees and
12 costs (Class Counsel will separately submit a motion for award of attorneys'
13 fees and costs);
- 14 iii. Approval of the enhancement awards to the Class Representative; and
- 15 iv. Reserving jurisdiction over the construction, interpretation, implementation,
16 and enforcement of the Parties' Settlement, and over the administration and
17 distribution of the Settlement amounts.

18 The [Proposed] Order Finally Approving Class Action Settlement and Entering Judgment to be
19 submitted shall be the document attached hereto as **Exhibit E**, unless the Court's orders during the
20 approval process require revisions to be made. Unless the Parties agree otherwise, only necessary
21 revisions shall be made to the [Proposed] Order Finally Approving Class Action Settlement and
22 Entering Judgment to be submitted to the Court.

23 28. Fairness Hearing. Upon expiration of the Document Receipt Deadline, the Parties
24 shall attend a Final Settlement Approval Hearing with the Court to finally approve the Settlement
25 as fair, reasonable, and adequate as to (a) Class Members; (b) attorneys' fees and costs to Class
26 Counsel; (c) the enhancement awards to the Class Representative; (d) the costs and fees for
27 settlement administration; (e) the PAGA Allocation, (f) the Individual Class Settlement Awards to
28 be paid to the Class Members, including the methodology used to calculate such awards; and (g)

1 the Individual PAGA Settlement Awards to be paid to the PAGA Members, including the
2 methodology used to calculate such awards.

3 **X. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

4 29. Final Settlement Approval, And Entry Of Judgment. At or before the Final
5 Settlement Approval Hearing, Class Counsel shall submit the [Proposed] Order Finally Approving
6 Class Action Settlement and Entering Judgment to the Court for the Court's approval and entry.
7 After entry of the Order Finally Approving Class Action Settlement and Entering Judgment, the
8 Court shall have continuing jurisdiction over the administration of the Settlement.

9 30. Payment Of Settlement Amount. Not later than thirty (30) calendar days following
10 the Effective Date, Defendant shall deposit the Total Class Action Settlement Amount, into an
11 account established by the Settlement Administrator. The Settlement Administrator will retain
12 authority over the deposited funds, which are to be used in accordance with this Stipulation and
13 any orders of the Court. The Settlement Administrator shall make all payments and other
14 disbursements required by this Stipulation from the Total Class Action Settlement Amount.
15 Defendant shall have no further obligations over the distribution of the Total Class Action
16 Settlement Amount.

17 31. Provision Of Final Settlement Approval Order And Judgment To Settlement
18 Administrator. Within two (2) business days of final approval by the Court of the Settlement
19 provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a
20 copy of the Final Settlement Approval Order and Judgment.

21 **XI. ADDITIONAL TERMS**

22 32. Nullification Of Settlement. This Stipulation shall be null and void, and any order
23 of judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if
24 any of the following occurs:

- 25 a) The Court does not enter the Final Settlement Approval Order and Judgment
26 as provided for herein or contemplated by this Stipulation;
- 27 b) The Court does not finally approve the Settlement as provided for herein;
- 28 c) The Court does not enter a Final Settlement Approval Order and Judgment

1 as provided for herein that becomes final as a result of the occurrence of the Effective Date;
2 or

3 d) The Settlement does not become final for any other reason.

4 In such a case, the Parties shall be returned to their respective statuses as of the date of April 17,
5 2019, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an
6 appeal is filed from the Court's Order Finally Approving Class Action Settlement and Entering
7 Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed
8 pending final resolution of the appeal process.

9 33. No Admissions. Nothing contained herein is to be construed or deemed to be an
10 admission of liability or wrongdoing by Defendant.

11 34. Amendment Or Modification. This Stipulation may be amended or modified only
12 by a written instrument signed by counsel for all Parties.

13 35. Entire Agreement. This Stipulation and the accompanying exhibits constitute and
14 comprise the entire agreement between the Parties. No oral or written representations, warranties,
15 or inducements have been made to any of the Parties concerning this Stipulation other than the
16 representations, warranties, and covenants contained and memorialized herein.

17 36. Construction. The Parties agree that the terms of this Stipulation and the
18 accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation
19 shall not be construed in favor of or against any of the Parties by reason of the extent to which any
20 of the Parties or their respective counsel participated in the drafting of this Stipulation.

21 37. Parties' Authority. The signatories to this Stipulation represent that they are fully
22 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions
23 hereof.

24 38. Successors, Heirs, And Assigns. This Stipulation is binding upon, and inures to the
25 benefit of, the Parties' successors, heirs, and assigns. The Parties represent and warrant that they
26 have not, directly or indirectly, assigned, transferred, or encumbered to any person or entity any
27 portion of any claim, demand, action, cause of action, or rights herein released and discharged
28 except as set forth herein.

1 39. Enforcement Of Actions. In the event that any of the Parties to this Stipulation
2 institutes any legal action, arbitration, or other proceeding against any of the other Parties to
3 enforce the provisions of this Stipulation or to declare rights or obligations under this Stipulation,
4 the successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable
5 attorneys' fees and costs, including expert witness fees, incurred in connection with any such
6 enforcement proceedings.

7 40. Governing Law. All terms of this Stipulation shall be governed by and interpreted
8 according to the laws of the State of California.

9 41. Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the
10 interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and
11 judgments entered in connection therewith.

12 42. Counterparts. This Stipulation may be executed in one or more counterparts. All
13 executed counterparts, and each of them, shall be deemed to be one and the same instrument.
14 Signatures may be affixed either by original signatures, PDF, or facsimile.

15 43. Notices. Unless otherwise specifically provided in this Stipulation, all notices,
16 demands, and/or other communications will be in writing and will be deemed to have been duly
17 given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

18 To The Class:

19 David G. Spivak
20 The Spivak Law Firm
21 8605 Santa Monica Blvd., PMB 42554
22 West Hollywood, CA 90069

23 Walter Haines
24 United Employees Law Group
25 4276 Katella Ave., #301
26 Los Alamitos, CA 90720

27 To Defendant:

28 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
29 Jack S. Sholkoff
30 400 South Hope Street, Suite 1200
31 Los Angeles, California 90071

32 44. Enforceability. The Parties intend for this Agreement to be enforceable in the
33 Superior Court of California for the County of Riverside, by and subject to the Court's pending

1 jurisdiction.

2 45. Interpretation. This Stipulation shall be construed as a whole according to its fair
3 meaning. It shall not be construed strictly for or against any Party. Unless the context indicates
4 otherwise, the term “or” shall be deemed to include the term “and,” and the singular or plural
5 number shall be deemed to include the other. Captions and headings are intended solely for
6 convenience of reference and shall not be used in the interpretation of this Stipulation.

7 46. Confidentiality. The Parties and their respective counsel agree that the terms of this
8 Settlement (including, but not limited to, the Total Class Action Settlement Amount and the
9 allocation thereof set forth in Paragraph 18), the negotiations leading to this Settlement, and all
10 documents related to the Settlement, shall not be disclosed to, discussed with, publicized, or
11 promoted to the media and/or any third party, except as necessary in order to enforce its terms.
12 Without limiting the foregoing, Class Counsel and/or Plaintiff (individually or in his capacity as
13 the Class Representative) will not list or refer to the Action or this Settlement in or on any website,
14 posting, mailing, written or other publicity, social media platform, blog, instant message platform,
15 or similar fora or materials (including, but not limited to, any publicity, statements, or
16 advertisements via radio or television, newspapers, or magazines). In response to any inquiries,
17 including those from media outlets, concerning this Settlement, the Parties and their respective
18 counsel agree that they shall simply respond by stating, “the matter has resolved”; and, further,
19 Class Counsel agrees not to use in any marketing materials (a) the names of Defendant or any other
20 Released Parties, and/or (b) any information about the Action.

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

24 48. Interim Stay Of Proceedings. The Parties agree to refrain from further litigation of
25 this matter, except such proceedings necessary to implement and obtain an Order granting Final
26 Approval of the terms of this Settlement. The Parties further agree that the mutual, voluntary
27 cessation of litigation shall terminate either as of the Effective Date or the date upon which this
28 Settlement has been denied by the Court and all subsequent attempts to cure deficiencies pursuant

1 to Paragraph 23 have ended.

2 49. Invalidity Of Any Provision. Before declaring any provision of this Stipulation
3 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
4 consistent with applicable precedents so as to define all provisions of this Settlement valid and
5 enforceable.


6 50. Class Certification For Settlement Purposes Only. The Parties agree to stipulate to
7 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not
8 approved, the stipulation to certification will be void. The Parties further agree that certification for
9 purposes of the Settlement is not an admission that class certification is proper under the standard
10 applied to contested certification motions and that this Settlement will not be admissible in this or
11 any other proceeding as evidence that (i) a class should or should not be certified or (ii) Defendant
12 is or is not liable to the Class Representative or the putative Class Members.

13 51. All Terms Subject To Final Court Approval. All amounts and procedures described
14 in this Stipulation shall be subject to final Court approval.

15 52. Execution Of Necessary Documents. All Parties shall execute all documents
16 reasonably necessary to effectuate the terms of this Settlement.

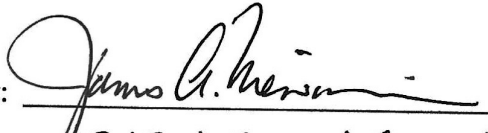
17 53. Binding Agreement. The Parties intend that this Settlement shall be fully
18 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
19 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
20 otherwise might apply under federal or state law.

21 06 / 14 / 2023
22 DATED: June ___, 2023

23
24 By:  _____
25 Marcello Ibarra
26 Plaintiff and Class Representative
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DATED: June 20, 2023

By: 
Its SVP & General Counsel

Defendant VESTA SOLUTIONS, INC., formerly known as AIRBUS DS COMMUNICATIONS, INC.

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.


DATED: June 20, 2023

By: 
Jack S. Sholkoff

Attorney for Defendant VESTA SOLUTIONS, INC., formerly known as AIRBUS DS COMMUNICATIONS, INC.

06 / 16 / 2023
DATED: June 16, 2023

THE SPIVAK LAW FIRM

By: 
David G. Spivak

Attorney for Plaintiff MARCELLO IBARRA

DATED: June 13, 2023

UNITED EMPLOYEES LAW GROUP

By: 
Walter Haines

Attorney for Plaintiff MARCELLO IBARRA

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

MARCELLO IBARRA, on behalf of himself, and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

AIRBUS DS COMMUNICATIONS, INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: RIC1722478

JUDGE: Honorable Harold W. Hopp

DEPARTMENT: 1

**NOTICE OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached with Defendant Vesta Solutions, Inc., formerly known as Airbus DS Communications, Inc. (“Defendant”), in the case entitled *Marcello Ibarra v. Airbus DS Communications, Inc.*, Case No. RIC1722478 (the “Action”). You are receiving this notice because Defendant’s records indicate that you are one of Defendant’s current or former employees who worked in California in Defendant’s Managed Services Support group during the time period of November 30, 2013 to December 15, 2022; and who was classified as hourly and not exempt from overtime pay (the “Class”). As a result, you will receive a portion of the settlement amount.

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the settlement will not affect your employment with Defendant in any way whatsoever.

The Court has ordered that this notice be sent to you as a member of the Class. The purpose of this notice is to inform you of the proposed settlement of the Action. The notice is also intended (i) to describe the settlement, including how the settlement monies will be allocated and how the settlement may affect you, and (ii) to advise you of your rights and options with respect to the settlement.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In November 2017, a former employee of Defendant filed a lawsuit on behalf of the Class in which he alleged multiple violations of the California Labor Code. The alleged California Labor Code violations included: (1) Failure to Provide Rest Breaks; (2) Failure to Provide Meal Periods; (3) Failure to Pay All Wages Earned for All Hours Worked; (4) failure to issue accurate and complete itemized wage statements (paystubs); (5) failure to timely pay final wages to employees at termination of employment; and (6) Unfair Competition; and (7) civil penalties under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 and

other statutes of the Private Attorneys General Act (“PAGA”). The individual who is suing Defendant is referred to in this document as “Plaintiff.” The Action was litigated in State Court in Riverside prior to this settlement.

Defendant contends that the members of the Class have been paid all monies that were due to them, maintains that it has at all times complied with the California Labor Code, and vigorously denies any wrongdoing alleged by Plaintiff.

The Court has not ruled on whether Plaintiff’s allegations have any merit. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Settlement Approval Hearing. However, for the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiff and Defendant have negotiated a settlement whereby Defendant has agreed to pay \$300,254.26 to resolve the matter, and Class Members will receive a portion of this amount. This settlement is **not** an admission by Defendant of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All persons who worked for Defendant in hourly positions that are not exempt from overtime pay in the State of California in Defendant’s Managed Services Support group at any time during the time period of November 30, 2013 to December 15, 2022 (the “Class Period”). Additionally, Aggrieved Employees (“PAGA Members”) are all Class Members who worked for Defendant in hourly positions that are not exempt from overtime pay in the State of California in Defendant’s Managed Services Support group at any time during the time period of November 30, 2016 to December 15, 2022 (the “PAGA Period”).

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. Defendant will pay Three Hundred Thousand Two Hundred Fifty Four Dollars and Twenty Six Cents (\$300,254.26) to settle the claims of all Class Members.

B. A Settlement Administrator has been appointed by the Court to administer the settlement. The Settlement Administrator will pay from the \$300,254.26: **(1)** Plaintiff’s counsel’s attorneys’ fees, up to \$71,666.67; **(2)** Plaintiff’s costs of litigation, up to \$23,900.00; **(3)** the expenses of administering the settlement, up to \$7,000; **(4)** an enhancement award of up to \$5,000.00 to Plaintiff; and **(5)** a payment of \$7,500.00 to the California Labor & Workforce Development Agency, representing 75% of the \$10,000 allocated to the settlement of Plaintiff’s claim for penalties under PAGA. The remainder of the \$300,254.26 will be divided and distributed to Class Members as individual settlement payments.

C. The amount to be distributed to Class Members will be divided among all Class Members. The amount of money you will receive as an individual settlement payment will be based on the total amount to be distributed to Class Members, after the amounts described in paragraph IV.B, above, are deducted, divided by the number of aggregate qualified weeks worked by all Class Members during the Class Period to produce a “Weekly Settlement Value.” A “qualified week” is any week during the Class Period in which a Class Member was employed by Defendant in California in an hourly job position that is not exempt from overtime pay in Defendant’s Managed Services Support group. If you do not opt out of the settlement, you will receive a settlement payment in the amount of the total number of qualified weeks you worked for Defendant during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings. **Your estimated individual settlement payment for class claims is: \$INDIVIDUAL’S AMOUNT.**

D. The amount to be distributed to PAGA Members will be divided among all PAGA Members. PAGA Members will be paid a pro rata portion of the \$2,500.00 payment allocated to the PAGA Members' portion of the \$10,000.00 allocated to the settlement of Plaintiff's claim for civil penalties under PAGA. The amount of an individual PAGA Member's PAGA payment will be based on the number of weeks worked by the PAGA Member for Defendant in California in an hourly job position in Defendant's Managed Services Support group at any time during the time period of November 30, 2016 to December 15, 2022 (the "PAGA Period"). The amount of an individual PAGA member's PAGA payment will be reported on a Form 1099. Because PAGA penalties can only be sought by or on behalf of the State of California, you cannot exclude yourself from the PAGA portion of the settlement if the Court gives final approval to the settlement. Even if you exclude yourself from the class action portion of the settlement, you will still receive your portion of the PAGA payment, will release the PAGA released claims, and will be barred from asserting any claim against Defendant and any of the Released Parties pursuant to PAGA based on the PAGA released claims. **Your estimated individual settlement payment for PAGA claims is: \$INDIVIDUAL'S AMOUNT.** PAGA released claims refers to the following: Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the Labor and Workforce Development Agency (the "LWDA").

E. If the Court approves the settlement agreement and you do not opt out of the class action portion of the settlement, then you will release Defendant; Plant Holdings, Inc.; AIRBUS U.S. Space & Defense, Inc. (formerly known as Airbus Defense and Space, Inc.); Airbus Group, Inc.; Airbus Americas, Inc.; Airbus SAS; Airbus SE; Motorola Solutions, Inc.; Vesta Solutions of Virginia, Inc.; and Vesta Solutions Communications Corp.; and any of their officers, directors, employees, and agents (collectively, the "Released Parties"), from the claims stated in the Complaint or the First Amended Complaint and those based solely upon the facts alleged in the Complaint or the First Amended Complaint that arose during the Class Period.

V. WHAT ARE MY OPTIONS?

A. *You may accept your share of the \$300,254.26 settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Settlement Administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued, after which it will be voided. No Class Member is able to exclude himself or herself from the PAGA portion of the settlement; *or*

B. *You may exclude yourself from the class action portion of the settlement, in which case you will not receive your share of the class action portion of the settlement and you will not be bound by the class action settlement, except to the extent that this settlement seeks to resolve claims under the PAGA.* If you choose to be excluded from the class action portion of the settlement, by no later than [30 calendar days after mailing of this Notice], you must submit a written request for exclusion, by fax or by mail, to the Settlement Administrator, ____, located at <<fax#>> or <<address>>. In order to be considered valid, your request for exclusion *must* be timely submitted and in a written format that includes your name, your address, a request for exclusion from the settlement, and your signature. A form ("ELECTION NOT TO PARTICIPATE IN ('OPT OUT' FROM) CLASS ACTION SETTLEMENT") has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. Regardless of which method you use, to be considered timely, your written request for exclusion must be postmarked by no later than [30 calendar days after mailing of this Notice]. No Class Member is able to opt out of the PAGA portion of the settlement.

C. *You may object to the settlement.* The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The Settlement Administrator will calculate your share of the settlement and will issue you a check.

B. Thirty-three percent (33%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining sixty-seven percent (67%). You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Settlement Administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money. Each check not cashed on or before 180 days after issuance shall be cancelled and the funds shall be redistributed pro rata by the Settlement Administrator to those Class Members and PAGA Members who have cashed their checks. Each redistributed check not cashed for more than 180 days after issuance shall be paid to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to the Class Member and PAGA Member the check was re-issued to.

VII. HEARING ON PROPOSED SETTLEMENT

A Final Settlement Approval Hearing will be held before the Court on _____, 2023, at ____ a.m., in Department 1 of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. In the discretion of the Court, any Class Member, or person purporting to object on behalf of any Class Member, may be received or considered by the Court at the Final Settlement Approval Hearing, regardless of whether a written notice of objection is submitted.

You are not required to attend the hearing. Counsel for Plaintiff and the Class will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

If you don't think the settlement is fair, you can object and tell the Court that you don't agree with the settlement or some part of it. The Court will consider your views. To object, you should send a written request, which you sign, saying that you object to the settlement of *Marcello Ibarra v. Airbus DS Communications, Inc.*, Case No. RIC1722478. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your employee ID number with Defendant, your address, the specific reasons you object to the terms of the settlement, and your signature. A form ("NOTICE OF OBJECTION FORM") has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. Mail or fax the objection to the address or fax number listed below for the Settlement Administrator, postmarked or faxed on or before [30 calendar days after mailing of this Notice].

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Action and the basic terms of the Settlement. More details regarding the Settlement and its terms are in the Settlement Agreement itself. The Settlement Agreement (attached as Exhibit 1 to the Declaration of David Spivak in support of Plaintiff's Fourth Motion for Preliminary Approval of the Class Action

Settlement filed on _____) and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Riverside County Superior Court located at 4050 Main St., Riverside, California 92501. On-site public access information terminals are available for researching cases at the Court. You may also access the Agreement online at: [http://www.public-access.riverside.courts.ca.gov/Open Access/](http://www.public-access.riverside.courts.ca.gov/OpenAccess/). The Settlement Administrator has posted the Settlement Agreement at www._____.com.

Information about the case may also be obtained by contacting the attorneys or Settlement Administrator using the contact information provided below.

If you have any questions, you can contact the Settlement Administrator at <<address>>, <<telephone>>, or <<fax>>, or any of Class Counsel (see below for phone numbers.)

<u>ATTORNEYS REPRESENTING THE CLASS</u>	<u>ATTORNEYS REPRESENTING DEFENDANT</u>
<p data-bbox="305 667 604 699">The Spivak Law Firm</p> <p data-bbox="180 699 727 856">David G. Spivak 8605 Santa Monica Blvd. PMB 42554 West Hollywood, CA 90069 Tel: (213) 725-9094 Fax: (213) 634-2485 david@spivaklaw.com</p> <p data-bbox="245 890 662 921">United Employees Law Group</p> <p data-bbox="180 921 727 1077">Walter Haines 4276 Katella Ave., #301 Los Alamitos, CA 90720 Tel: (562) 256-1047 Fax: (562) 256-1006 whaines@uelglaw.com</p>	<p data-bbox="852 667 1515 699">Ogletree, Deakins, Nash, Smoak & Stewart, P.C.</p> <p data-bbox="912 699 1453 888">Jack S. Sholkoff 400 South Hope Street, Suite 1200 Los Angeles, California 90071 Tel: (213) 239-9800; Fax: (213) 239-9045 jack.sholkoff@ogletree.com</p>

PLEASE DO NOT CALL THE COURT, DEFENDANT, DEFENDANT'S CORPORATE OFFICE AND MANAGERS, OR DEFENDANT'S ATTORNEYS REGARDING THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS

ACTION SETTLEMENT

Superior Court of the State of California, County of Riverside

Marcello Ibarra v. Airbus DS Communications, Inc.

Case No. RIC1722478

DO NOT SIGN OR SUBMIT THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION PORTION OF THE SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE CLASS ACTION PORTION OF THE SETTLEMENT.

THIS DOCUMENT MUST BE FAXED OR POSTMARKED NO LATER THAN _____, 2023. IT MUST BE SENT VIA FAX OR REGULAR U.S. MAIL.

PLEASE FAX OR MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:

MARCELLO IBARRA V. AIRBUS DS COMMUNICATIONS, INC. SETTLEMENT ADMINISTRATOR, C/O [SETTLEMENT ADMINISTRATOR], at [ADMINISTRATOR ADDRESS][ADMINISTRATOR FAX #]

IT IS MY DECISION NOT TO PARTICIPATE IN THE CLASS ACTION PORTION OF THE SETTLEMENT REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS ACTION PORTION OF THE SETTLEMENT AND ANY CLAIMS I HAVE WILL NOT BE RELEASED. I FURTHER UNDERSTAND THAT BY EXCLUDING MYSELF FROM THE CLASS ACTION PORTION OF THE SETTLEMENT, I DO NOT HAVE THE RIGHT TO EXCLUDE, AND AM NOT EXCLUDING, MYSELF FROM THE PORTION OF THE SETTLEMENT RELEASING CLAIMS FOR CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (“PAGA”).

I confirm that I am and/or was employed by Vesta Solutions, Inc., formerly known as Airbus DS Communications, Inc. (“Defendant”), and that I work or have worked for Defendant in an hourly position that is not exempt from overtime pay (“non-exempt”) in the State of California in Defendant’s Managed Services Support group during any part of the period from November 30, 2013 to December 15, 2022. I confirm that I have received and reviewed the Notice of Class and Representative Action Settlement in this action. I understand that PAGA penalties will only be distributed among the PAGA Members (the aggrieved employees) whether or not they opt out of the proposed settlement. I have decided to be excluded from the class, and I have decided **not** to participate in the class action portion of the proposed settlement. I understand that my exclusion from class settlement will not result in exclusion from any PAGA settlement.

Dated: _____

(Signature)

(Last 4 Digits of Social Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)

EXHIBIT C

NOTICE OF OBJECTION FORM
Superior Court of the State of California, County of Riverside
Marcello Ibarra v. Airbus DS Communications, Inc.
Case No. RIC1722478

**THIS FORM IS TO BE USED ONLY IF YOU OBJECT TO THE TERMS
OF THE SETTLEMENT.**

IF YOU OBJECT TO THE SETTLEMENT, YOU MUST SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY, AND YOU MUST FAX OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR SO THAT IT IS POST MARKED ON OR BEFORE <<OBJECTION DEADLINE>>, TO:

[SETTLEMENT ADMINISTRATOR]

Settlement Administrator for *Marcello Ibarra v. Airbus DS Communications, Inc.* Class and Representative Action
Settlement

<<ADDRESS>>
<<CITY, STATE ZIP>>
<<FAX #>>

**IF YOU DO NOT WANT TO OBJECT TO THE SETTLEMENT, DO NOT
SUBMIT THIS FORM.**

A. PLEASE STATE YOUR IDENTIFYING INFORMATION:

Name: _____
Address Line 1: _____
Address Line 2: _____
Telephone Number: _____
Last 4 Digits of Your Social Security Number: _____

B. LEGAL AND FACTUAL ARGUMENTS SUPPORTING THE OBJECTION:

The Court will consider your objection at the Final Settlement Approval Hearing if you submit a timely and valid written statement of objection. Any objection must describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I understand that my objection to the settlement will not result in my exclusion from it.

I OBJECT to the *Marcello Ibarra v. Airbus DS Communications, Inc.* Settlement on the following grounds (Please describe the nature and basis of your objection. If additional space is necessary, please include additional sheets of paper):

Dated

Signature

FILL-OUT AND RETURN ONLY IF YOU OBJECT TO THE TERMS OF THE SETTLEMENT

EXHIBIT D

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

MARCELLO IBARRA, on behalf of himself,
and all others similarly situated, and as an
“aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

Plaintiff,

vs.

AIRBUS DS COMMUNICATIONS, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. RIC1722478

**[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT PURSUANT TO THE
TERMS OF FIFTH AMENDED JOINT
STIPULATION RE: CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

[Assigned for all purposes to
The Honorable Harold W. Hopp, Dept. 1]

Action filed: 11/30/2017
Hearing Date: 06/13/2023
Hearing Time: 8:30 a.m.
Hearing Dept.: 1, Hon. Harold W. Hopp
Reservation: 424286131562

1 This matter came on for hearing on May 24, 2023 upon the Motion for Preliminary Approval
2 of the proposed settlement of this action on the terms set forth in the Fifth Amended Joint Stipulation
3 re: Class and Representative Action Settlement (the “Settlement” or “Stipulation”). Having
4 considered the Settlement, all papers and proceedings held herein, and having reviewed the entire
5 record in this action, Case No. RIC1722478, entitled *Marcello Ibarra v. Airbus DS Communications,*
6 *Inc.* (the “Action”), and good cause appearing, the Court finds that:

8 WHEREAS, plaintiff Marcello Ibarra (“Plaintiff”) has alleged claims against defendant Vesta
9 Solutions, Inc., formerly known as Airbus DS Communications, Inc. (“Defendant”) on behalf of
10 himself and on behalf of others similarly situated, comprising: “All persons who worked for
11 Defendant in non-exempt positions in the State of California in Defendant’s Managed Services
12 Support group at any time during the Class Period”; and

14 WHEREAS, Plaintiff asserts claims against Defendant for (1) Failure to Provide Rest Breaks;
15 (2) Failure to Provide Meal Periods; (3) Failure to Pay All Wages Earned for All Hours Worked; (4)
16 Wage Statement Penalties; (5) Waiting Time Penalties; (6) Unfair Competition; and (7) Civil
17 penalties under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et*
18 *seq.* (“PAGA”); and

19 WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of law
20 alleged in the Action, and further denies any liability whatsoever to Plaintiff, or to the Class Members
21 or PAGA members; and

23 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendant
24 (collectively, the “Parties”) determined that it was mutually advantageous to settle the Action and to
25 avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

26 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
27 about January 3, 2023, subject to the approval of this Court;

1 NOW, therefore, the Court grants preliminary approval of the Settlement, and

2 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

3 1. To the extent defined in the Fifth Amended Joint Stipulation re: Class and
4 Representative Action Settlement attached as Exhibit A to the Declaration of David Spivak in
5 Support of the Motion for Preliminary Approval, filed on _____, 2023 incorporated
6 herein by reference, the terms in this Order shall have the meanings set forth therein. All terms herein
7 shall have the same meaning as defined in the Fifth Amended Settlement Agreement. The Court will
8 make a determination at the hearing on the motion for final approval of class action settlement (the
9 “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the
10 Settlement Class.
11

12 2. The Court has jurisdiction over the subject matter of the Action, Defendant, and the
13 Class.
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15 3. The Class is defined as follows: “All persons who worked for Defendant in non-
16 exempt positions in the State of California in Defendant’s Managed Services Support group at any
17 time during the Class Period.”

18 4. PAGA Members are defined as follows: “All persons who worked for Defendant in
19 non-exempt positions in the State of California in Defendant’s Managed Services Support group at
20 any time during the PAGA Period.”

21 5. The Court has determined that the intended notice, attached hereto as **Exhibit 1**, to
22 be given to the Class fully and accurately informs all persons in the Class of all material elements of
23 the proposed Settlement, constitutes the best notice practicable under the circumstances, and
24 constitutes valid, due, and sufficient notice to all Class Members. The Court has determined that the
25 intended notice shall be accompanied by an exclusion form and objection form that the class
26 members may use, attached hereto as **Exhibit 2** and **Exhibit 3**, respectively. Any exclusion form or
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1 objection form provided by a class member shall be submitted to the Settlement Administrator and
2 not filed with the court. The settlement administrator is required to send copies of any exclusion
3 forms or objection forms to counsel. Class members are not required to send copies of the exclusion
4 form or objection form to counsel. The settlement administrator shall file a declaration concurrently
5 with the filing of the motion for final approval, authenticating a copy of every exclusion form and
6 objection form received by the administrator. The intended exclusion form and objection form to be
7 given to the Class, constitute the best exclusion form and objection form practicable under the
8 circumstances.
9

10 6. The Court hereby grants preliminary approval of the Settlement and Stipulation and
11 Orders the parties to consummate the Settlement in accordance with the terms of the Stipulation.
12 However, the Court has determined only that there is sufficient evidence to suggest that the proposed
13 settlement is fair, adequate, and reasonable, and that any final determination of any possible issues
14 will be made at the final hearing.
15

16 7. The plan of distribution as set forth in the Stipulation providing for the distribution of
17 the Net Settlement Amount to Settlement Class Members and PAGA Members is preliminarily
18 approved as being fair, reasonable, and adequate.
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20 8. The Court preliminarily appoints as Class Counsel the following attorneys: (1) David
21 G. Spivak of The Spivak Law Firm, 8605 Santa Monica Bl. PMB 42554, West Hollywood, CA
22 90069; and (2) Walter Haines of United Employees Law Group, 4276 Katella Ave., #301, Los
23 Alamitos, CA 90720.

24 9. The Court preliminarily approves the payment of attorneys' fees in the amount of not
25 to exceed \$71,666.67 to Class Counsel, which shall be paid from, and not in addition to, the Total
26 Class Action Settlement Amount.
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28 10. The Court preliminarily approves the payment of attorneys' costs in the amount of

1 not to exceed \$23,900.00 to Class Counsel, which shall be paid from, and not in addition to, the Total
2 Class Action Settlement Amount.

3 11. The Court preliminarily approves a payment in the amount of \$7,500.00 to the
4 California Labor & Workforce Development Agency, representing the State of California's portion
5 of civil penalties under PAGA, which shall be paid from, and not in addition to, the Total Class
6 Action Settlement Amount.
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8 12. The Court preliminarily approves the payment of reasonable claims administration
9 costs to the Settlement Administrator, Phoenix Settlement Administrators, in the amount of not to
10 exceed \$7,000.00, which shall be paid from, and not in addition to, the Total Class Action Settlement
11 Amount. The Court preliminarily approves the nature of the services that the Settlement
12 Administrator is required to perform, as described in the Fifth Amended Joint Stipulation re: Class
13 and Representative Action Settlement, ¶ 20, incorporated herein by reference.
14

15 13. The Court preliminarily approves an enhancement award to Plaintiff and class
16 representative Marcello Ibarra in the amount of not to exceed \$5,000.00, which amount shall be paid
17 from, and not in addition to, the Total Class Action Settlement Amount.

18 14. This Preliminary Approval Order and the Stipulation, and all papers related thereto,
19 are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or
20 wrongdoing whatsoever.
21

22 15. In the event that the Settlement does not become effective in accordance with the
23 terms of the Stipulation, then this Preliminary Approval Order shall be rendered null and void to the
24 extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event,
25 all orders entered and releases delivered in connection herewith shall be null and void to the extent
26 provided by and in accordance with the Stipulation, and each party shall retain his or its rights to
27 proceed with litigation of the Action.
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16. The Final Fairness Hearing shall be held on _____, **2023** or _____, **2023** at 8:30 a.m. in Department 1. No later than ten calendar days prior to the Final Approval Hearing, the settlement administrator shall give notice to any objecting party of any continuance of the hearing of the motion for final approval.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: _____

Hon. Harold W. Hopp
Riverside County Superior Court Judge

EXHIBIT E

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

MARCELLO IBARRA, on behalf of himself, and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff,

vs.

AIRBUS DS COMMUNICATIONS, INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. RIC1722478

[PROPOSED] ORDER FINALLY APPROVING CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND ENTERING JUDGMENT

[Assigned for all purposes to
The Honorable Harold W. Hopp, Dept. 1]

Action Filed: November 30, 2017
Trial Date: None

1 This matter came on for hearing on _____, upon the Motion for Final Approval of
2 the proposed settlement of this action on the terms set forth in the Fifth Amended Joint Stipulation
3 re: Class and Representative Action Settlement (the “Settlement” or “Stipulation”) (attached as
4 Exhibit 1 to the Declaration of David Spivak in support of Plaintiff’s Fourth Motion for
5 Preliminary Approval of the Class Action Settlement filed on _____). Due and
6 adequate notice having been given to the members of the Class, and having considered the
7 Settlement, all papers and proceedings held herein, and all oral and written comments received
8 regarding the proposed Settlement, and having reviewed the entire record in this action, Case No.
9 RIC1722478, entitled *Marcello Ibarra v. Airbus DS Communications, Inc.* (the “Action”), and
10 good cause appearing, the Court finds that:

11 WHEREAS, plaintiff Marcello Ibarra (“Plaintiff”) has alleged claims against defendant
12 Vesta Solutions, Inc., formerly known as Airbus DS Communications, Inc. (“Defendant”) on
13 behalf of himself and on behalf of others similarly situated, comprising: “All persons who worked
14 for Defendant in non-exempt positions in the State of California in Defendant’s Managed Services
15 Support group at any time during the Class Period”; and

16 WHEREAS, Plaintiff asserts claims against Defendant for (1) Failure to Provide Rest
17 Breaks; (2) Failure to Provide Meal Periods; (3) Failure to Pay All Wages Earned for All Hours
18 Worked; (4) Wage Statement Penalties; (5) Waiting Time Penalties; (6) Unfair Competition; and
19 (7) Civil penalties under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code
20 §§ 2698, *et seq.* (“PAGA”); and

21 WHEREAS, Defendant expressly denies the allegations of wrongdoing and violations of
22 law alleged in the Action, and further denies any liability whatsoever to Plaintiff, or to the Class
23 Members or PAGA Members; and

24 WHEREAS, without admitting any liability, claim, or defense, Plaintiff and Defendant
25 (collectively, the “Parties”) determined that it was mutually advantageous to settle the Action and
26 to avoid the costs, delay, uncertainty, and business disruption of ongoing litigation; and

27 WHEREAS, the Parties agreed to resolve the Action and entered into the Stipulation on or
28 about _____, 2023, subject to the approval of this Court;

1 WHEREAS, this Court granted preliminary approval of the Parties' Settlement in the
2 Action on or about _____, 2023 (the "Preliminary Approval Order"); and

3 WHEREAS, notice to the Class Members was sent in accordance with the Stipulation and
4 the Preliminary Approval Order; and

5 WHEREAS, a fairness hearing on the proposed Settlement having been duly held and a
6 decision reached;

7 NOW, therefore, the Court grants final approval of the Settlement, and

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

9 1. To the extent defined in the Settlement, attached hereto as Exhibit 1 to the
10 Declaration of David Spivak in support of Plaintiff's Fourth Motion for Preliminary Approval of
11 the Class Action Settlement filed on _____, 2023 and incorporated herein by
12 reference, the terms in this Order shall have the meanings set forth therein.

13 2. The Court has jurisdiction over the subject matter of the Action, Defendant, and the
14 Class.

15 3. The Court has determined that the notice given to the Class fully and accurately
16 informed all persons in the Class of all material elements of the proposed Settlement – including
17 the plan of distribution of the Settlement funds, the application for an enhancement award to the
18 Class Representative, and the application for an award of attorneys' fees and costs to Class Counsel
19 – constituted the best notice practicable under the circumstances, and constituted valid, due, and
20 sufficient notice to all Class Members.

21 4. The Court hereby grants final approval of the Settlement and Stipulation as fair,
22 reasonable, and adequate in all respects to the Class Members and PAGA Members and Orders the
23 parties to consummate the Settlement in accordance with the terms of the Stipulation.

24 5. The plan of distribution as set forth in the Stipulation providing for the distribution
25 of the Net Settlement Amount to Class Members and PAGA Members is approved as being fair,
26 reasonable, and adequate. Any envelope transmitting a settlement distribution to a Class Member
27 shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Any
28 settlement distribution check shall be negotiable for at least 90 days but not more than 180 days

1 from the date of mailing. The Settlement Administrator shall mail a reminder postcard to any class
2 member whose settlement distribution check has not been negotiated within 60 days after the date
3 of mailing. If (i) any of the Class Members are current employees of the Defendant, (ii) the
4 distribution mailed to those employees is returned to the Settlement Administrator as being
5 undeliverable, and (iii) the Settlement Administrator is unable to locate a valid mailing address, the
6 Settlement Administrator shall arrange with the Defendant to have those distributions delivered to
7 the employees at their place of employment.

8 6. The Class is defined as follows: “All persons who worked for Defendant in non-
9 exempt positions in the State of California in Defendant’s Managed Services Support group at any
10 time during the Class Period.”

11 7. PAGA Members are defined as follows: “All persons who worked for Defendant in
12 non-exempt positions in the State of California in Defendant’s Managed Services Support group at
13 any time during the PAGA Period.”

14 8. As previously held in the Court’s Preliminary Approval Order, the Court appoints as
15 Class Counsel the following attorneys: (1) David G. Spivak of The Spivak Law Firm and (2)
16 Walter Haines of United Employees Law Group.

17 9. The Court approves the payment of attorneys’ fees in the amount of \$
18 _____ [not to exceed \$71,666.67] to Class Counsel, which shall be paid from, and not
19 in addition to, the Total Class Action Settlement Amount, as follows: \$ _____ to The Spivak Law
20 Firm and \$ _____ to United Employees Law Group.

21 10. The Court approves the payment of attorneys’ costs in the amount of
22 \$ _____ [not to exceed \$23,900.00] to Class Counsel, which shall be paid from, and not
23 in addition to, the Total Class Action Settlement Amount, as follows: \$ _____ to The Spivak Law
24 Firm and \$ _____ to United Employees Law Group.

25 11. The Court approves a payment in the amount of \$7,500.00 to the California Labor &
26 Workforce Development Agency, representing the State of California’s portion of civil penalties
27 under PAGA, which shall be paid from, and not in addition to, the Total Class Action Settlement
28 Amount.

1 12. The Court approves the payment of reasonable claims administration costs to the
2 Settlement Administrator, Phoenix Settlement Administrators, in the amount of \$ _____
3 [not to exceed \$7,000.00], which shall be paid from, and not in addition to, the Total Class Action
4 Settlement Amount.

5 13. The Court approves an enhancement award to Plaintiff and class representative
6 Marcello Ibarra in the amount of \$ _____ [not to exceed \$5,000.00], which amount
7 shall be paid from, and not in addition to, the Total Class Action Settlement Amount.

8 14. Without affecting the finality of this Final Order and Judgment, the Court reserves
9 exclusive and continuing jurisdiction over the Action; plaintiff Marcello Ibarra; the Class; and
10 Defendant for the purposes of: (a) supervising the implementation, enforcement, construction, and
11 interpretation of the Stipulation, the Preliminary Approval Order, the distribution of the Total Class
12 Action Settlement Amount, and this Final Order and Judgment; and (b) hearing and determining
13 the application by Class Counsel for an award of attorneys' fees, costs, and expenses, which
14 hearing shall take place concurrently with the hearing for this Final Order and Judgment.

15 15. Upon entry of this Final Order and Judgment, and by operation of this Final Order
16 and Judgment, the claims in the Action of each Class Member and each PAGA Member against
17 Defendant, and against any and all of the Released Parties (as defined in the Stipulation), are fully,
18 finally, and forever released, relinquished, and discharged pursuant to the terms of the Stipulation.

19 16. Each member of the Class who did not submit timely and valid Exclusion Forms are
20 bound by this Final Order and Judgment, including, without limitation, the release of claims as set
21 forth in the Stipulation.

22 17. The Court finds that Class Members, _____, have timely and validly
23 opted out of the Class Settlement and will not be bound by this Final Order and Judgment as it
24 pertains to the Stipulation.

25 18. This Final Order and Judgment and the Stipulation, and all papers related thereto,
26 are not, and shall not be construed to be, an admission by Defendant of any liability, claim, or
27 wrongdoing whatsoever, and shall not be offered as evidence of any such liability, claim, or
28 wrongdoing in the Action or in any other proceeding.

1 19. In the event that the Settlement does not become effective in accordance with the
2 terms of the Stipulation, then this Final Order and Judgment shall be rendered null and void to the
3 extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event,
4 all orders entered and releases delivered in connection herewith shall be null and void to the extent
5 provided by and in accordance with the Stipulation, and each party shall retain his, her or its rights
6 to proceed with litigation of the Action.

7 20. The Court finds that there is no just reason for delay of entry of this Final Order and
8 Judgment and hereby directs its entry.

9 21. Notice of entry of this Final Order and Judgment shall be given to the Class
10 Members by posting a copy of the Final Approval Order and Judgment on the Settlement
11 Administrator’s website for a period of at least sixty (60) calendar days after the date of entry of
12 this Final Order and Judgment. Individualized notice is not required.

13 22. A Final Report (Nonappearance) Hearing is set for _____ at ____ a.m./p.m.
14 in Department 1 and the parties shall file a report concerning the amount of money distributed at
15 least five (5) Court days prior to the Final Report (Nonappearance) Hearing.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

17 DATED: _____

Hon. Harold W. Hopp
Riverside County Superior Court Judge

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