

LUIS M. SALAS RAZO, on his own behalf of	)	Case No.: 1:20-cv-0172 JLT HBK
and all others similarly situated,	)	
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF'S MOTION FOR
	)	PRELIMINARY APPROVAL OF CLASS
	)	SETTLEMENT
v.	)	
	)	(Doc. 72)
AT&T MOBILITY SERVICES, LLC, and	)	
DOES 1 through 100	)	
	)	
Defendants.	)	
	)	

The Court reviewed the proposed settlement between the parties, as well as the moving papers, and finds the matter suitable for decision without oral arguments pursuant to Local Rule 230(g). For the following reasons, the Court finds conditional certification of a settlement class is not appropriate and preliminary approval of the class settlement is **DENIED**.

1 **I. Background**

2 Razo was employed a sales representative at the AT&T Mobility Store located in Madera,  
3 California. (Doc. 41 at 4, ¶ 11.) Razo asserts he worked for AT&T “for approximately eleven years”  
4 until his termination in June 2018. (*Id.*) He alleges AT&T “routinely failed to properly calculate the  
5 overtime and double time rate of pay.” (*Id.* at 6, ¶ 25.) Razo asserts AT&T “failed to include its  
6 employees’ total compensation including bonuses and commissions when calculating the regular rate  
7 for the purposes of determining overtime wages owed and thus routinely underpaid employees for  
8 overtime wages owed.” (*Id.*) Razo contends this underpayment was “evidenced in [his] paycheck and  
9 accompanying wage statement issued June 13, 2018.” (*Id.*, ¶ 26.)

10 He alleges the wage statements also “failed to properly list all hours worked which again resulted  
11 in an underpayment of wages including overtime and double time wages to employees.” (Doc. 4 at 6,  
12 ¶ 27.) He contends, “[t]his resulted in failure to pay wages for all hours worked at appropriate rates,  
13 and overtime violations for work performed over eight (8) hours per day and/or forty (40) hours per  
14 week.” (*Id.*) For example, Razo asserts his wage statement from June 13, 2018, “incorrectly reflects  
15 that the total hours worked because the hours associated with all of the line items add up to 106.08, but  
16 the total hours worked line item only lists 81.98 hours.” (*Id.* at 7, ¶ 27.)

17 Razo asserts he and others “received paychecks without proper wages, as meal period  
18 premiums were not paid at the proper rate, and the regular rate of pay was miscalculated.” (Doc. 41 at  
19 7, ¶ 28.) Razo contends AT&T paid premiums for missed meal periods at his “base hourly rate, rather  
20 than the regular rate of pay.” (*Id.*) According to Razo, the miscalculation was “evidenced in [his]  
21 paycheck and accompanying wage statement issued June 1, 2018, which shows the untaken meal  
22 break premium is paid at [the] base hourly rate,” without incorporating his commission in the premium  
23 rate paid. (*Id.*)

24 Razo contends “on routine basis he and all other aggrieved employees received wage  
25 statements in violation of Labor Code §226, as hours and rates were not properly shown on wage  
26 statements.” (Doc. 41 at 7, ¶ 29 (emphasis omitted).) He alleges, “where there are payments for items  
27 such as cash awards, commission, taxable non-cash-awards, miscellaneous payment, or overtime ‘true  
28 up’ payments, there are no specific details as to rate or hours in the description or analysis that make

1 up the payment.” (*Id.*) He asserts the wage statements also violated California law because:  
2 “premium pay for meal period violations were paid at the... base hourly rate, rather than his regular  
3 rate of pay; the total hours listed are incorrect because the hours associated with the wage statement’s  
4 line items exceed the number of total hours worked listed; and the wage statements list improper  
5 overtime rates because [AT&T] omitted items such as “COMMISSION (MOBILITY)” when  
6 calculating its employee’s regular rate of pay.” (*Id.* at 7-8, ¶ 31.)

7 According to Razo, due to the miscalculated wages, AT&T also failed “to pay for all wages due  
8 prior to termination.” (Doc. 41 at 8, ¶ 32.) In addition, Razo alleges that his “last day of work was in  
9 June 2018, but since such date four additional payments were made with the latest payment made as  
10 late as August 2018 well more than thirty (30) days after he ceased employment.” (*Id.*, ¶ 35.) He  
11 reports these “payments consisted of the final payment of wages described as (1) Cash Awards, (2)  
12 Commission, (3) Taxable non-cash Awards, (4) Misc. Payment, and (5) recalculation of overtime  
13 differential pay.” (*Id.* at 9, ¶ 36.) Razo contends that AT&T “knew or should have known, that all  
14 other employees, including Plaintiff, were entitled to receive all wages at appropriate rates, all overtime  
15 at appropriate rates, and all commissions due at the time their employment ceased,” and knowingly and  
16 willfully failed to pay the wages due upon termination. (*Id.*, ¶¶ 36-37.)

17 On May 29, 2019, Razo provided notice to the Labor and Workforce Development Agency and  
18 AT&T “of the specific provisions of the California Labor Code alleged to have been violated, including  
19 the facts and theories to support the alleged violations.” (Doc. 41 at 9, ¶ 42 (emphasis omitted).) He  
20 asserts the LWDA did not respond to the notice. (*Id.*, ¶ 43.)

21 On August 27, 2019, Razo initiated this action by filing a class complaint in Madera County  
22 Superior Court, Case No. MCV081925. (Doc. 1-4 at 5.) Razo filed an amended complaint in the state  
23 court on January 8, 2020. (Doc. 1-9.) AT&T initiated the matter before this Court by filing a notice  
24 of removal on January 31, 2020. (Doc. 1.) Razo further amended the pleadings on July 30, 2020, and  
25 October 15, 2021. (Docs. 9, 41.) The Third Amended Complaint is now the operative pleading.

26 Razo identifies the following causes of action in the TAC: (1) failure to pay for all hours  
27 worked; (2) failure to pay overtime wages; (3) failure to pay wages due at termination in violation of  
28 Cal. Labor Code §§ 201-203; (4) failure to furnish accurate, itemized wage statement in violation of

Cal. Labor Code § 226; (5) unlawful and unfair conduct in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*; and (6) civil penalties under California’s Private Attorney General Act. (Doc. 41 at 13-23.) Razo asserted the claims were brought on behalf of himself and classes including:

1. “The Plaintiff Class”: All persons who have been, or currently are, employed by Defendant and who held, or hold, job positions which Defendant have classified as “non-exempt” personnel in the State of California. (The Class Period is the period from August 27, 2015, through and including the date judgment is rendered in this matter).
2. “The Terminated Sub Class”: All members of the Plaintiff Class whose employment ended during the Class Period (The Class Period is the period from August 27, 2015, through and including the date judgment is rendered in this matter).

(*Id.* at 10.) AT&T filed its answer on October 28, 2021. (Doc. 46.)

While this matter was pending, AT&T settled a separate class action addressing “the same claims” as those raised by Razo, in *Samuel Wallack, et al. v. AT&T Mobility Services, LLC*, San Bernardino County Superior Court Case No. CIVSB2117915.<sup>1</sup> (Doc. 72 at 4; *see also* Doc. 50 at 2.) The *Wallack* court denied Razo’s motion to intervene. (Doc. 49.) The *Wallack* proposed settlement class included “persons who worked for AT&T Mobility Services LLC in the State of California, while classified as non-exempt, at any time from August 1, 2015 through November 2, 2021. (Doc. 72 at 6.)

On March 8, 2022, Razo filed the motion for preliminary approval of the settlement with AT&T in this action. (Doc. 72.) In seeking approval of the settlement, Razo acknowledged: “[o]nce the *Wallack* Court grants final approval, the only remaining claims in this matter will be those Razo has asserted on behalf of those who worked for Defendant in a non-exempt role in California from November 2, 2021, onwards.” (*Id.* at 6.) Thus, Razo and AT&T agreed to settle the claims of a class

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<sup>1</sup> The Court may take judicial notice of a fact that “is not subject to reasonable dispute because it (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). The official records of the Superior Court of San Bernardino County, as contained in the court’s official website, are sources whose accuracy cannot reasonably be questioned, and judicial notice may be taken of documents on the website of a state court. *See Harris v. County of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012) (judicial notice may be taken of “undisputed matters of public record, including documents on file in federal or state courts”); *O’Toole v. Northrop Grumman Corp.*, 499 F.3d 1218, 1225 (10th Cir. 2007) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web”). Accordingly, the Court takes judicial notice of the San Bernardino County Superior Court docket in Case No. CIVSB2117915, including the filing dates and documents publicly available. This docket is available at <https://www.sb-court.org>, and through the court’s online portal at <https://cap.sb-court.org>.

defined as: “All persons who worked for AT&T Mobility Services LLC in the State of California, while classified as non-exempt, at any time from November 2, 2021, to the date the Court grants preliminary approval of this Settlement.” (*Id.* at 7; *see also* Doc. 72-4 at 4, Settlement ¶ 2.)

The settlement in *Wallack* received final approval on March 18, 2022, and an “Amended Order Nunc Pro Tunc Granting Joint Motion for Final Approval of Class Action Settlement and Judgment” was issued on April 19, 2022. The *Wallack* class was confirmed to include: “All persons who worked for AT&T Mobility Services LLC in the State of California, while classified as non-exempt, at any time from August 1, 2015 through November 2, 2021.” (*Wallack*, Case No. CIVSB2117915, *Amended Order*, p. 2.)

## **II. The Proposed Settlement Terms**

Pursuant to the proposed “Class Action and PAGA Action Settlement Agreement (“the Settlement”), the parties agree to a gross settlement amount of \$575,000.00 for the class including: “all persons who worked for AT&T Mobility Services LLC in the State of California, while classified as non-exempt, at any time from November 2, 2021, to the date the Court grants preliminary approval of this Settlement.” (Doc. 72-4 at 4-5, ¶¶ 2, 6.)

### **A. Payments**

The parties propose the settlement fund cover payments to class members, including enhanced compensation to Razo as the Class Representative. (Doc. 74-2 at 9, Settlement ¶ 24.) In addition, the Settlement provides for payments to Class Counsel for attorneys’ fees and costs, to the Settlement Administrator, and the California Labor & Workforce Development Agency. (*Id.* at 5, ¶ 6.)

Specifically, the Settlement provides for the following payments from the gross settlement amount:

- The Class Representative will receive a service payment of \$10,000;
- Class counsel will receive \$191,666.76 in attorneys’ fees, which equals 33 1/3 % of the gross settlement amount, and expenses up to \$10,000.00;
- The California Labor and Workforce Development Agency shall receive \$7,500 from the total PAGA payment of \$10,000; and
- The Settlement Administrator will receive up to \$30,000 for fees and expenses.

(*Id.* at 5, 8-9, Settlement ¶¶ 6, 23-24.) After these payments, the remaining money (“Net Settlement Amount”) would be distributed as settlement shares to class members. (*Id.* at 5, Settlement ¶ 10.)

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