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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 WILLIAM JEFF BARE, on behalf of the
general public as private attorney general,
13

14 Plaintiff,

15 v.

16 AT&T SERVICES INC.; a Delaware
Corporation; and DOES 1-50, inclusive,
17

18 Defendant.
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Case No. 34-2022-00321000
[Assigned for all purposes to Judge Jill H.
Talley, Dept. 23]

**NOTICE OF MOTION AND MOTION
TO APPROVE INDIVIDUAL PAGA
SETTLEMENT AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION**

Date: October 11, 2024
Time: 9:00 AM
Dept.: 23

RESERVATION A-321000-001

1 **I. INTRODUCTION**

2 Plaintiff WILLIAM JEFF BARE ("Plaintiff") and Defendant AT&T SERVICES INC.
3 ("Defendant") (together, the "Parties") reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, et seq. ("PAGA") claim asserted in this action against
5 Defendant. The only claim in this action is the representative PAGA claim. In accordance with
6 California Labor Code §2699(l), Plaintiff now requests that this Court review and approve the
7 settlement of Plaintiff's Individual PAGA claims. This is only a settlement of the Plaintiff's
8 *individual* PAGA claims for civil penalties, and is not a class settlement and does not release the
9 individual or PAGA claims, if any, of any allegedly aggrieved employees other than the Plaintiff.
10 Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014).

11 The PAGA settlement is set forth in the accompanying Settlement Agreement and Release
12 ("Settlement", "Agreement" or "Settlement Agreement"). A true and correct copy of the
13 Settlement Agreement, which sets forth the terms for the settlement of the Individual PAGA
14 claims, is attached as Exhibit 1 to the Declaration of James Hawkins, filed herewith. Capitalized
15 terms in this Motion shall have the same meaning as defined in the Settlement Agreement. The
16 LWDA was served notice of this Settlement and this motion as set forth in the Proof of Service
17 accompanying this Motion.

18 A proposed order approving the Individual PAGA settlement is submitted herewith.

19 **II. RELEVANT FACTS**

20 On June 6, 2022, Plaintiff filed the PAGA Representative Action in the Superior Court of
21 California in and for the County of Sacramento, styled *WILLIAM JEFF BARE, on behalf of the*
22 *general public as private attorney general v. AT&T SERVICES INC., and Does 1 through 50,*
23 *Inclusive*, Case No. 34-2022-00321000. Plaintiff alleged a singular cause of action under PAGA
24 for Defendant's alleged (a) failure overtime wages, (b) failing to pay all wages earned and owed
25 upon separation from Defendant's employ, (c) failing to provide accurate itemized wage
26 statements, (d) failing to pay vested vacation pay at separation, and (e) failing to reimburse
27 expenses. (Hawkins Decl., at ¶ 3). Prior to filing his Complaint, on March 29, 2022, Plaintiff
28 provided the California Labor and Workforce Development Agency ("LWDA") with written

1 notice of his intent to assert those claims. More than 65 days elapsed without Plaintiff receiving
2 any response from the LWDA, and Plaintiff thereafter filed the Complaint.

3 During the course of this action Defendant and Plaintiff exchanged numerous documents
4 and information through informal discovery, including Defendant providing Plaintiff with his
5 time and payroll records and Defendant's relevant policies. The Parties engaged in significant
6 efforts to obtain the facts regarding the claims asserted.

7 Plaintiff and Defendant engaged in arms'-length negotiations and entered into the
8 Settlement Agreement to settle Plaintiff's individual claims and individual PAGA claim, and *not*
9 his representative, non-individual PAGA claim. (Hawkins Decl., at ¶¶ 4, 5, 8).

10 **III. TERMS OF THE AGREEMENT**

11 The Agreement negotiated by the parties provides for Defendant to pay \$50,000.00 as the
12 Gross Settlement Amount ("GSA"). (Agreement at § 1). The GSA is subject to Court approval
13 consistent with Labor Code § 2699. The GSA comprises the following components: (1)
14 \$27,690.37 allocated for wages and penalties for Plaintiff's individual, non-PAGA claims (the
15 "Individual Payments Amount"); (2) \$22,009.63 allocated for attorneys' fees (the "Attorney's
16 Fees Payment Amount"); (3) \$75.00 allocated for penalties directly recoverable under PAGA for
17 individual violations suffered by Plaintiff (the "Individual PAGA Amount"); and (4) \$225.00
18 allocated to the LWDA under PAGA (the "LWDA Payment Amount"). (*Id.*)

19 In exchange for the Individual PAGA Amount and the LWDA Payment, the State of
20 California and Plaintiff will release Defendant from any and all civil penalties which could be
21 assessed upon and collected from Defendant for violations of PAGA allegedly suffered by
22 Plaintiff.

23 Specifically, the Settlement Agreement states:

24 BARE on behalf of BARE and BARE's heirs, representatives, executors,
25 administrators, successors, and assigns releases (i.e., gives up) all known and
26 unknown claims that BARE has as of the time BARE signs this Agreement
27 ("RELEASED CLAIMS") against AT&T, all current and former, direct and
28 indirect parents, subsidiaries, brother-sister companies, and all other affiliates and
related partnerships, joint ventures, or other entities, and, with respect to each of
them, their predecessors and successors; and, with respect to each such entity, all

1 of its past, present, and future employees, officers, directors, stockholders, owners,
2 representatives, assigns, attorneys, agents, insurers, employee benefit programs
3 (and the trustees, administrators, fiduciaries, and insurers of such programs), and
4 any other persons acting by, through, under, or in concert with any of the persons,
5 or entities listed in this section, and their successors ("RELEASEES"). For
6 example, BARE is releasing all common law contract, tort, or other claims BARE
7 has or might have, as well as all claims BARE has or might have under the Worker
8 Adjustment & Retraining Notification Act (the WARN Act), the Family and
9 Medical Leave Act (FMLA), Title VII of the Civil Rights Act of 1964 (Title VII),
10 Sections 1981 and 1983 of the Civil Rights Act of 1866, the Americans With
11 Disabilities Act (ADA), the Employee Retirement Income Security Act of 1974
12 (ERISA), and any similar domestic or foreign laws, such as the California Fair
Employment and Housing Act, California Family Rights Act (CFRA), California
Labor Code Section 200 et seq., California Labor Code Section 2698 et seq.,
California Business and Professions Code Section 17200, et seq., and any
applicable California Industrial Welfare Commission order. However, BARE is
not releasing (i) any of the few claims that the law does not permit BARE to
release by private agreement; (ii) vested benefits (except already-denied benefits)
under any employee-benefit plan governed by ERISA; (iii) any right BARE has to
be indemnified by AT&T; or (iv) BARE's right to enforce this Agreement.

13 (Agreement at §4).

14 The California Labor Workforce Development Agency ("LWDA") is being served with a
15 copy of this motion with the Settlement Agreement through the online process as required by
16 Labor Code § 2699(l). This service on the LWDA is verified in the proof of service served with
17 this motion. (Hawkins Decl., ¶ 7).

18 **IV. THE PARTIES HAVE SETTLED THE INDIVIDUAL PAGA CLAIMS**
19 **ONLY**

20 Plaintiff's individual PAGA claim is the *only* PAGA claim being settled through the
21 Settlement Agreement. The Parties are not seeking approval of any PAGA settlement on behalf
22 of other allegedly aggrieved employees. (Hawkins Decl., at ¶¶ 4-5). Plaintiff is requesting that
23 only his own, individual PAGA claims be dismissed with prejudice, and the PAGA claims as to
24 any other allegedly aggrieved employees be dismissed without prejudice.

25 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
26 **SETTLEMENT OF THE PAGA CLAIM**

27 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of
28 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to

1 the agency at the same time that it is submitted to the court." Consequently, the parties
2 respectfully ask the Court to review and approve the settlement of the Plaintiff's individual
3 PAGA claim.

4 **A. The Remaining Settlement Terms Are Fair and Reasonable**

5 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
6 Code § 2699(1) does not require that a court approve any other elements of the proposed
7 settlement. Because there are no class allegations, the approval provisions applicable to class
8 settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to
9 approve the settlement of the civil penalties sought in Plaintiff's individual PAGA claim.
10 Nevertheless, as explained herein, the settlement terms are reasonable.

11 Most critically, there are significant legal and factual hurdles that Plaintiff will encounter
12 should this case proceed. The majority of Plaintiff's claims in the Complaint hinge upon his
13 allegation that he was improperly classified as an exempt employee, which Defendant denies.
14 Plaintiff alleges that he was therefore improperly compensated for overtime worked, leading to
15 other derivative claims (failure to pay all wages earned at termination and incorrect wage
16 statements). However, because Plaintiff was classified as exempt, he did not track his time
17 worked, or keep track of any breaks that he may have taken. As such, it would be extremely
18 difficult to ascertain how much overtime he worked. This, in turn, means that it is uncertain if
19 Plaintiff would be entitled to any PAGA penalties at all.

20 In addition, through the Parties' review of Plaintiff's time and wage records, they
21 determined that Plaintiff worked only 15 pay periods during the applicable statute of limitations
22 for his individual PAGA claims. Because PAGA penalties are calculated per pay period, this
23 significantly reduces the amount of penalties that Plaintiff would be eligible to receive even
24 assuming that he is entitled to PAGA penalties. For example, Plaintiff would be entitled, at
25 maximum, to only \$2,900 in penalties for failure to pay overtime—and, more likely, could only
26 recover a maximum of \$1,500, if the Court were to impose only the \$100 per pay period "initial"
27 violation method, as AT&T would argue it should do. *See Vieyara-Flores v. Sika Corp.*, 2019
28 U.S. Dist. LEXIS 98081, at *12-13 (C.D. Cal. 2019) (collecting cases and explaining that

1 California courts hold employers are not subject to the heightened PAGA penalty until a court or
2 the labor commissioner notifies the employer it is in violation of the Labor Code). As to other
3 alleged violations in Plaintiff's complaint, the parties' exchange of information revealed little
4 support for his claim for expense reimbursement or the alleged failure to pay all earned vacation
5 at the time of termination, making any recovery at all for those claims even more uncertain.
6 Given that the penalties at issue are low, as well as the serious risk that Plaintiff would take
7 nothing by way of his PAGA claim, a settlement of Plaintiff's PAGA claims for \$300 is
8 reasonable.

9 Finally, no consideration, direct or indirect, is being given to Plaintiff to resolve the claims
10 of any individual other than Plaintiff, and the settlement reached between Plaintiff and Defendant
11 does not release the claims of any individual other than Plaintiff.

12 The Parties agree to bear their own costs and attorneys' fees with respect to the dismissal
13 of the PAGA claim as to any allegedly aggrieved employees other than Plaintiff.

14 VI. CONCLUSION

15 Based on the foregoing, Plaintiff respectfully requests that this Court approve the
16 Individual PAGA settlement as set forth in the Agreement and enter the proposed order submitted
17 herewith.

18 Dated: July 24, 2024

JAMES HAWKINS APLC

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22 By: _____

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LAUREN FALK
AVA ISSARY

25 Attorneys for Plaintiff WILLIAM JEFF
26 BARE, individually and on behalf of the
27 general public as Private Attorney General
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On July 24, 2024, I served on the interested parties in this action the following document(s) entitled:

**DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE
INDIVIDUAL PAGA SETTLEMENT**

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(See List Attached)

Executed on July 24, 2024, at Irvine, California

PROOF OF SERVICE

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