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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WENDELL WALTON and MICHAEL
MANTONYA, individually and on behalf
of all other similarly situated individuals,

Plaintiffs,

v.

AT&T SERVICES, INC.,

Defendant.

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Case No. 15-cv-03653-VC

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION OF CLASS, APPROVAL OF
CLASS NOTICE, AND SETTING OF FINAL
APPROVAL HEARING**

Hearing Date: October 12, 2017

Time: 10:00 am

Courtroom: 4, 17th Floor

Judge: The Honorable Vince G. Chhabria

NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION

To the Clerk of Court and all interested parties:

PLEASE TAKE NOTICE THAT on October 12, 2017, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 4 of this Court, located at 450 Golden Gate Avenue, 17th Floor, San Francisco, California 94102, before the Honorable Vince Chhabria, Plaintiffs Wendell Walton and Michael Mantonya, hereby do and will move the Court to (1) conditionally certify a settlement class; (2) preliminarily approve the parties' proposed class action settlement (the "Settlement"); (3) appoint Plaintiffs as the Class Representatives, their counsel as Class Counsel, and JND Legal Administration, as Settlement Administrator; (4) approve the forms of notice to the class of the settlement and the Claim Form; and (5) schedule a hearing on the final approval of the Settlement for January 25, 2018, or as soon thereafter as the Court is available.

Plaintiffs make this unopposed motion on the grounds that the Settlement is fair, adequate and reasonable and within the range of possible final approval.

This motion is based upon this Notice of Unopposed Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, Approval of Class Notice, and Setting of Final Approval Hearing and the following Memorandum in Support of Joint Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, Approval of Class Notice, and Setting of Final Approval Hearing; the accompanying Declaration of Jahan Sagafi in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of Class, Approval of Class Notice, and Setting of Final Approval Hearing; and proposed form of Order: (1) Preliminarily Approving Proposed Settlement; (2) Conditionally Certifying Settlement Class; (3) Appointing Class Representative, Class Counsel, and Settlement Administrator; (4) Approving Forms of Notice to Class of Settlement, Class Member Settlement Information Sheet; and (5) Setting Hearing for Final Approval; the Court's record of this action; all matters of which the Court may take notice; and such oral or documentary evidence presented at the hearing on the motion.

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MEMORANDUM IN SUPPORT OF JOINT MOTION

I. INTRODUCTION

This case is a hybrid wage-and-hour FLSA collective action and California class action. Plaintiffs and putative class members are individuals who worked for AT&T Services, Inc. or AT&T Mobility Services LLC (“AT&T”) in the job title of Senior Training Manager - Design (“Designer”) or Senior Training Manager – Delivery (“Deliverer”). Plaintiffs hereby request preliminary approval of a \$2,750,000 collective/class action settlement. The Settlement is structured as a hybrid common fund and claims-made fund. The common fund, with no reversion, applies to California Class Members and all existing FLSA Opt-Ins. The claims-made fund applies to new participants – anyone meeting the collective definition who did not opt into this case and worked exclusively outside California but still could assert a timely FLSA claim.

II. THE WAGE AND HOUR CLAIMS, COMPLETED DISCOVERY, AND MEDIATION

This action alleges that Designers and Deliverers, who have the primary duty of designing and delivering training materials to AT&T employees, have been misclassified as exempt, though their primary duty is to perform nonexempt work. *Id.*

AT&T asserts the administrative exemption under California and federal law, arguing that the class members regularly exercise discretion and independent judgment as to matters of significance and work under only general supervision. Declaration of Jahan C. Sagafi (Sagafi Decl.), ¶ 17.

The parties vigorously litigated the case, conducting significant individual and class discovery, including litigation over many discovery disputes, collective action certification, and summary judgment, depositions of the named Plaintiffs and one Opt-In Plaintiff, depositions of Plaintiffs’ supervisors, and production of thousands of documents. In September 2016, the Court conditionally certified the nationwide FLSA collective. ECF No. 107. Eventually, 91 collective members opted in. In April 2017, the Court denied AT&T’s motions for summary judgment against Mr. Walton and Mr. Mantonya. ECF No. 182. Thereafter, the parties pursued settlement discussions and, on August 17, 2017, attended a full-day mediation with private mediator David A. Rotman, resulting in a settlement in principle.

III. THE PROPOSED SETTLEMENT

The Settlement Class comprises all individuals who worked for AT&T who are not bound by the Management Arbitration Agreement (“MAA”), who worked as a Designer or Deliverer in the following three categories: (1) those who worked in California from May 18, 2011 forward (“California Class Members”); (2) those who worked outside of California from May 18, 2012 forward and opted into the litigation already (“Existing Opt-Ins”); (3) those who worked outside of California from August 18, 2014 forward and have not opted into the litigation (“Future Opt-Ins”); as well as a fourth category: those worked as a Designer or Deliverer in California from May 18, 2014 forward, regardless of whether they are bound by the MAA (the “PAGA Representative Group”). Sagafi Decl., Ex. 1 (Settlement Agreement), §§ 3-4. There are approximately 47 California Class Members, 68 Existing Opt-Ins, 189 potential Future Opt-Ins, and 146¹ PAGA Representative Group members. *Id.*, Ex. 3 (Damages Estimate). For ease of reference, categories #1, #2, and #4 are referred to as the “Existing Group” (i.e., those covered or potentially covered by the lawsuit as pled), in contrast to category #3 (the Future Opt-Ins, who are not already covered by the lawsuit as pled).

The \$2,750,000 “Maximum Settlement Amount” will cover: (a) class member payments; (b) \$80,000 to pay the PAGA settlement for the PAGA Representative Group, with 75% paid to the California Labor and Workforce Development Agency (the LWDA) for PAGA penalties; (c) two Class Representative Service Payments of \$20,000 each; (d) seven Witness Service Awards of \$5,000 each for the seven deponent/declarants who provided testimony in support of Plaintiffs’ mediation brief; (e) Class Counsel’s fees up to \$1,100,000 (40% of the Maximum Settlement Amount); (f) actual awarded litigation costs, up to \$100,000; and (f) settlement administration costs estimated to be \$40,000. Sagafi Decl., Ex. 1 (Settlement Agreement), § 13(a)-(e).

This Settlement has a somewhat unusual structure, in that the funds paid to Class Members (the “Net Fund Value” or “NFV”) will be allocated 85% to the Existing Group (“NFV-A”) and 15% to the Future Opt-Ins (“NFV-B”). NFV-A is a common fund with no reversion, with unclaimed funds redistributed to members of the Existing Group who participate in the Settlement. NFV-B is a claims-

¹ Of those 146, 99 are PAGA-only, and 47 are both California Class Members and PAGA Representative Group Members.

made fund, with unclaimed funds reverting to AT&T, because each Future Opt-In's affirmative participation in the Settlement is a prerequisite to a release of his or her FLSA claims. Within each portion of the NFV, Class Members' settlement payment will be calculated based on (a) how many workweeks they worked in or outside California (California time being worth 3x non-California time due to stronger claims, a more favorable law of damages calculation methodology, plus California-specific penalties) and (b) their job title (Deliverer time being worth 1.5x Designer time due to factual differences between the two roles). Sagafi Decl., Ex. 1 (Settlement Agreement), § 13(g)(1)-(5).

To recover their settlement share, all Class Members must sign and return the Arbitration Agreement (Sagafi Decl., Ex. 1-B), requiring them to arbitrate future claims on an individual basis. Class Members in the Existing Group are, by default, included in the coverage of the lawsuit and will therefore release the Released Claims if they do not opt out. If they do nothing, they will release their claims and receive no money. In addition, the Future Opt-Ins must file a Claim Form (Sagafi Decl., Ex. 1-B), because they are, by default, *not* included in the coverage of the lawsuit. If they do nothing, they will *not* release their claims, nor will they receive money. For Future Opt-Ins who do not return a claim form, AT&T will be entitled to retain their portion of the settlement fund because their affirmative participation in the Settlement is a prerequisite to a release of their FLSA claims.

The release is limited to only those claims actually asserted in the action or factually related to the allegations made in the action. *Id.* § 24.

The proposed Class Notice Packet includes the Notice, the Claim Form, the Arbitration Agreement, the Notice envelope, and Reminder Postcard. *Id.* §§ 18, 21. The notice and the reminder notice will be sent by both mail and email. In addition, the Settlement Administrator and Class Counsel are authorized to and intend to engage in supplemental efforts to ensure that Class Members are aware of the terms of the Settlement, the consequences of action and inaction, and the response deadline. The deadline to submit claim forms, submit Arbitration Agreements, object, and/or opt out will be 45 days after mailing of the Notice. *Id.* § 19.

IV. ARGUMENT

Settlement of a class action is subject to the Court's approval. Fed. R. Civ. P. 23(e). At the preliminary approval stage, "district courts should review class action settlements just as carefully . . . as

they do at the final stage.” *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (Chhabria, J.) (*Cotter II*). “[T]he inquiry” at preliminary approval “should be whether the settlement is ‘fair, reasonable, and adequate,’ based on any information the district court receives from the parties or can obtain through its own research.” *Id.* Similarly, approval of an FLSA settlement requires the Court to determine whether “the settlement represents a fair and reasonable resolution of a bona fide dispute.” *Selks v. Pioneers Mem’l Healthcare Dist.*, 159 F. Supp. 3d 1164, 1172 (S.D. Cal. 2016).

A. Certification of The California Rule 23 Class Is Proper.

For settlement purposes only, the parties agree to conditional certification of the California class. “The validity of use of a temporary settlement class is not usually questioned.” Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 11:22 (4th Ed. 2002). The Manual for Complex Litigation, Fourth, § 21.612, explains the benefits of settlement classes:

Settlement classes—cases certified as class actions solely for settlement—can provide significant benefits to class members and enable the defendants to achieve final resolution of multiple suits. Settlement classes also permit defendants to settle while preserving the right to contest the propriety and scope of the class allegations if the settlement is not approved and, in Rule 23(b)(3) actions, to withdraw from the settlement if too many class members opt out. An early settlement produces certainty for the plaintiffs and defendants and greatly reduces litigation expenses.

Moreover, the Court already has granted conditional certification of the FLSA collective. ECF 107.

Here, in further support of conditional certification, plaintiffs offer the following, which for purposes of settlement only AT&T does not contest (although AT&T contends that the facts do not justify class certification under the governing legal standards):

First, numerosity is met because joinder of the Class Members would be impractical. Fed. R. Civ. P. 23(a)(1). It is generally held that “numerosity may be presumed at a level of forty members.” *Whiteway v. FedEx Kinko’s Office & Print Servs., Inc.*, No. 05 Civ. 2320, 2006 WL 2642528, at *4 & n.3 (N.D. Cal. Sept. 14, 2006) (emphasis omitted). Here, the 47 California Class Members are readily identifiable from AT&T’s payroll records. Joinder of all such employees, would be impracticable, both due to (1) the logistical challenges of making dozens of people parties, (2) employees’ fear of retaliation for suing an employer, and (3) individuals’ lack of time and interest in pursuing the possibility of legal

1 relief, measured against the responsibility of participating in litigation and the likelihood of being
2 subjected to discovery.

3 Second, commonality is met because “there are questions of law or fact common to the class.”
4 Fed. R. Civ. P. 23(a)(2). The Ninth Circuit “construe[s]” this requirement “permissively.” *Hanlon v.*
5 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Even though proposed class members “may
6 possess different avenues of redress,” so long as “their claims stem from the same source,” there is
7 sufficient commonality “to satisfy the minimal requirements of Rule 23(a)(2).” *Id.* at 1019-20. Here,
8 common questions include (1) whether AT&T’s exemption classification applies to all Class Members;
9 (2) whether Class Members’ duties relate to AT&T’s management policies or its general business
10 operations; and (3) whether Class Members customarily and regularly exercise discretion and
11 independent judgment regarding matters of significance. Courts routinely hold that commonality exists
12 in overtime misclassification cases where the plaintiff simply alleges that that all subject employees
13 faced a common wrong by being “misclassified as exempt.” *Greko v. Diesel U.S.A., Inc.*, 277 F.R.D.
14 419, 426 (N.D. Cal. 2011); *Bowerman v. Field Asset Servs., Inc.*, No. 13 Civ. 00057, 2015 WL 1321883,
15 at *14 (N.D. Cal. Mar. 24, 2015) (finding commonality met because the “key legal issue underlying this
16 case is whether putative class members were misclassified under California law as independent
17 contractors instead of employees”).²

18 Third, typicality is satisfied. Typicality “focuses on the similarity between the lead plaintiff’s
19 legal theories and those of the people he or she purports to represent.” *Whiteway*, 2006 WL 2642528, at
20 *6 (citing *Lightbourn v. Cty. of El Paso*, 118 F.3d 421, 426 (5th Cir. 1997)). As a general matter, the
21 typicality analysis “tend[s] to merge” with the commonality analysis, *Whiteway*, 2006 WL 2642528 at
22 *6 (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982)), and is “permissive,” *Hanlon*,

23 ² In addition, the California meal and rest breaks and unfair competition claims pose common questions,
24 such as (1) whether AT&T lacks a policy relieving class members of all duties so they may take the
25 requisite meal and rest breaks and (2) whether AT&T failed to pay for missed meal and rest breaks. See
26 *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th 1129, 1150 (2012) (holding common question
27 predominated where plaintiffs “challeng[ed] the fact that the employer’s lack of a policy violated the
28 law”) (emphasis in original); see also *Wang v. Chinese Daily News, Inc.*, No. 04 Civ. 01498, 2014 WL
1712180, at *7 (C.D. Cal. Apr. 15, 2014) (“[C]urrent California and federal law affirm that [the
defendant’s] uncontested lack of any meal or break policy is strong evidence favoring class certification
in this matter.”).

1 150 F.3d at 1020. Typicality is established if “representative claims are . . . reasonably co-extensive
2 with those of absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020.
3 Here, each Class Representative’s claims arise from a single set of nationwide policies and common
4 practices applicable throughout AT&T’s operations. The Class Representatives all hold the same job
5 titles as their respective subclasses and are subject to the same policies and pay practices as the Class
6 Members they seek to represent. As such, they advance the same legal theories, and the typicality
7 requirement of Rule 23(a)(3) is satisfied.

8 Fourth, plaintiffs have fairly and adequately protected the interests of the class, and will continue
9 to do so. Fed. R. Civ. P. 23(a)(4). This requirement is grounded in “due process concerns,” as class
10 members are constitutionally entitled to “adequate representation before entry of a judgment which
11 binds them.” *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940)). The
12 adequacy requirement is met where the class representative: (1) has common, and not antagonistic,
13 interests with unnamed class members, and (2) will vigorously prosecute the interests of the class
14 through qualified counsel. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Hanlon*, 150
15 F.3d at 1020. Here, each Class Representative shares a common interest with the Class Members he
16 seeks to represent, in that they all suffered the same type of injury, and they share an interest in vigorous
17 prosecution. The Class Representatives have retained adequate Class Counsel, who are highly qualified
18 in terms of experience and expertise. Sagafi Decl. ¶¶ 4-10; Declaration of Jason C. Marsili (“Marsili
19 Decl.”) ¶¶ 3-17.

20 Fifth, the predominance test of Rule 23(b)(3) is met, because the proposed Class is sufficiently
21 cohesive to warrant adjudication on a classwide basis. *Amchem*, 521 U.S. at 623. In a misclassification
22 action like this one, the “balance between individual and common issues” hinges on the existence of
23 “comprehensive uniform policies detailing the job duties and responsibilities of employees [which] carry
24 great weight for certification purposes.” *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571 F.3d
25 953, 958-59 (9th Cir. 2009) (citing *Damassia v. Duane Reade, Inc.*, 250 F.R.D. 152, 160 (S.D.N.Y.
26 2008)); *see also Perez v. Allstate Ins.*, No. 11 Civ. 1812, 2014 WL 4635745, at *7 (E.D.N.Y. Sept. 16,
27 2014) (“[U]niform corporate procedures and policies are unquestionably probative of . . . actual duties.”)
28 (citation and internal quotation marks omitted). Predominance can be met where, as here, “the employer

exercised some level of centralized control in the form of standardized hierarchy, standardized corporate policies and procedures governing employees, uniform training programs, and other factors susceptible to common proof.” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009) (citing cases). “[U]niformity in work duties and experience . . . diminish the need for individualized inquiry.” *Id.* at 947 (quoting affirmed lower court opinion). Importantly, predominance does not require “that each element of [a plaintiff’s] claim [is] susceptible to classwide proof.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (internal quotation marks and citation omitted). Common questions may predominate “even though certain class members’ circumstances var[y] and some of the defendant’s practices would have to be proven by anecdotal testimony.” *Delagarza v. Tesoro Ref. & Mktg. Co.*, No. 09 Civ. 5803, 2011 WL 4017967, at *12 (N.D. Cal. Sept. 8, 2011) (Chen, J.). Here, common issues predominate because Plaintiffs and the other Class Members shared the same job title and were subject to similar practices and policies. *See, e.g., Vinole*, 571 F.3d at 947; *Nelson v. Avon Prod., Inc.*, No. 13 Civ. 2276, 2015 WL 1778326, at *9 (N.D. Cal. Apr. 17, 2015); *Perez*, 2014 WL 4635745, at *20 (predominance met where “the primary job duties of [class members] are largely similar for purposes of the . . . exemption determination”); *Damassia*, 250 F.R.D. at 159-61.

Sixth, a class action is superior to individual suits, especially for settlement purposes. *Amchem*, 521 U.S. at 615. This requirement is satisfied because “there is no indication that class members seek to individually control their cases, that individual litigation is already pending in other forums, or that this particular forum is undesirable for any reason.” *Tierno v. Rite Aid Corp.*, No. 05 Civ. 02520, 2006 WL 2535056, at *11 (N.D. Cal. Aug. 31, 2006) (Henderson, J.). Class Members likely lack the resources and certainly lack the incentives to secure experienced, qualified counsel or to see litigation through to completion on their own. Few rational middle-class individuals would invest \$51,000 in costs plus scores of hours of their own time and the stress inherent in litigation for a chance to recover a comparable amount in lost pay. In addition, individual lawsuits from hundreds of individuals would be wasteful and inefficient for both the court system and AT&T. *See, e.g., Whiteway*, 2006 WL 2642528 at *11. Accordingly, certification of this Settlement Class is superior to any other method of resolving this matter, as it will promote economy, expediency, and efficiency.

Finally, the Court should appoint Class Counsel pursuant to Rule 23(g). Rule 23(g) requires a court that certifies a class to appoint class counsel, taking into consideration four factors: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Plaintiffs' Counsel satisfy these criteria. Plaintiffs' Counsel are experienced class action and wage and hour attorneys, have the resources to prosecute the action to completion, and used their expertise to obtain a positive result for the class. Sagafi Decl. ¶¶ 4-10, 26-30; Marsili Decl. ¶¶ 3-18.

For these reasons, the proposed Settlement Class should be certified for settlement purposes.

B. The Parties Participated in Arms-Length Negotiations Before An Experienced Neutral Mediator.

The Parties agreed to the substantial settlement amount in the late evening after a day-long arms'-length negotiation before David A. Rotman, an extremely experienced and well-respected private mediator with immense complex wage and hour class action mediation experience. A settlement "in good faith after a well-informed arms-length negotiation" is presumed to be fair. *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149, 2008 WL 8150856, at *4 (C.D. Cal. July 21, 2008); see *Tijero v. Aaron Bros., Inc.*, 301 F.R.D. 314, 324-25 (N.D. Cal. 2013) (where settlement reached after parties participated in private mediation, settlement was appropriate for final approval); *Carter v. Anderson Merchandisers, LP*, No. EDCV 08-00025, 2010 WL 144067, at *6 (C.D. Cal. Jan. 7, 2010) (two days of mediation with an experienced mediator confirms settlement is the product of arms-length negotiation).

C. The Proposed Settlement Is Fair, Reasonable, And Adequate, And Should Be Approved in All Respects.

"Assessing a settlement proposal requires [a] court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Hanlon*, 150 F.3d at 1026. Here, those factors weigh heavily in favor of preliminary approval.

1 **1. The Parties Dispute The Strength of Plaintiffs' Case.**

2 When courts decide whether to give preliminary approval to a class action settlement, “perhaps
3 the most important factor to consider is ‘plaintiffs’ expected recovery balanced against the value of the
4 settlement offer.’” *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (Chhabria, J.)
5 (citations omitted) (*Cotter I*). Courts should also evaluate “the relative strengths and weaknesses of the
6 plaintiffs’ case; it may be reasonable to settle a weak claim for relatively little, while it is not reasonable
7 to settle a strong claim for the same amount.” *Id.*

8 While Plaintiffs believe that they can prevail on all issues, to recover full damages, they would
9 have to surmount all of the following hurdles – loss on any one would eliminate or significantly reduce
10 the recovery: (1) Rule 23 class certification and FLSA decertification, (2) liability at trial, (3) hours of
11 overtime and damages calculations, and (4) appeal. With respect to these issues, there is evidence
12 supporting AT&T’s argument that (1) Class Members work in diverse circumstances, on different
13 training modules, for different managers, in different locations; (2) Class Members performed complex
14 duties involving discretion that were administrative in nature, working with significant autonomy,
15 earning high salaries that would make a jury unsympathetic; (3) Class Members worked very few
16 overtime hours, as reflected by AT&T’s timekeeping systems, and AT&T could show good faith and a
17 lack of willfulness; and (4) reversal of victories at the district court by an increasingly conservative
18 Ninth Circuit and Supreme Court created real risks of defeat regardless of any victories at trial.

19 Plaintiffs calculate AT&T’s potential exposure as \$8.0 million in damages and penalties for
20 California Class Members for non-PAGA claims, \$2.8 million in PAGA penalties for the PAGA
21 Representative Group, \$1.9 million in FLSA damages for Existing Opt-Ins, and \$0.7 million in FLSA
22 damages for Future Opt-Ins (assuming that a new case were filed on the day of the mediation, and 20%
23 of all potential opt-ins opted in). Sagafi Decl. ¶ 22.

24 This results in a maximum potential exposure of \$13.4 million. See *id.* Ex. 3 (Damages
25 Estimate). This figure assumes that Plaintiffs would win their equitable tolling argument (that delays in
26 discovery early in the case warranted 173 days of tolling of Existing Opt-ins’ claims), that the Court find
27 AT&T’s actions to be willful, justifying the three-year FLSA limitations period, that the Court find that
28 AT&T did not act in good faith and award 100% liquidated damages on the FLSA claims, that Plaintiffs

1 prove five meal and rest break violations per week, that Plaintiffs prove 45 hours of work per week, 52
 2 weeks per year, and that the Court award all possible California penalties. Sagafi Decl. ¶¶ 22-23. This
 3 exposure, allocated among the 403 Class Members,³ equals approximately \$33,000 per class member.
 4 The \$2,750,000 settlement equates to approximately \$6,800 per class member.

5 Applying 50% discounts for certification, liability, damages, and appeal (as detailed above), an
 6 aggregate discount could be 93.75% (i.e., $1 - 0.5^4$), equal to \$837,500. Similarly, the PAGA allocation
 7 of \$80,000 represents 3% of the total \$2,750,000 settlement amount, which is in line with applicable
 8 precedent. *See, e.g., Cotter II*, 193 F. Supp. 3d at 1037 (\$1m allocated to PAGA penalties for
 9 California-only \$27m settlement (i.e., 4%)); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1329-30
 10 (N.D. Cal. 2014) (Cousins, M.J.) (\$10,000 allocated to PAGA penalties for \$1.25 million settlement
 11 (i.e., 1%)). Though the damages model assigns 17% of the total exposure (\$2.8m/\$16.4m), proving
 12 entitlement to all penalties would be challenging, requiring both victory on the underlying Labor Code
 13 and FLSA claims and the Court exercising its discretion to award 100% of the penalty for all violations,
 14 making a steeper discount for PAGA claims appropriate. Cal. Lab. Code § 2699(e)(2).

15 Given these considerations, Plaintiffs submit that the \$2.75 million settlement amount, including
 16 the \$80,000 PAGA amount, is fair, reasonable, and adequate, and that Settlement is in the best interests
 17 of the class.

18 **2. The Risk, Expense, Complexity, And Delay of Further Litigation Support** 19 **Preliminary Approval.**

20 Settlement now saves Class Members significant risk of no recovery, the cost of individual
 21 litigation, and the delay inherent in further litigation and possible appeals. As detailed above, the
 22 litigation is highly complex, both procedurally and substantively. Absent settlement, the parties would
 23 need to conduct substantial additional discovery into Class Members' job duties and hours as well as
 24 AT&T's good faith and willfulness, depositions and written discovery of a sampling of opt-ins, further
 25 pre-trial motion practice, expert discovery, and trial preparations. Once liability had been established on
 26 a classwide basis, Class Members would likely be required to testify at individual damages mini-trials.

27 ³ This equals the sum of individuals in the four groups; because the groups overlap, the actual number of
 28 unique individuals is smaller, making the per-person average higher than reflected here.

Further litigation could easily last several more years and investment of hundreds of thousands of dollars more in costs, and a million dollars or more of attorney time. For these reasons, the law strongly favors settlements, particularly where complex class action litigation is concerned. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

3. Plaintiffs Faced Substantial Risk of Losing Rule 23 Certification And FLSA Decertification.

The risk of losing class and collective status was very real. *See, e.g., Benedict v. Hewlett-Packard Co.*, No. 13 Civ. 00119, 2016 WL 3742342, at *1 (N.D. Cal. July 13, 2016) (Freeman, J.) (Outten & Golden as counsel) (case subsequently settled on an individual basis for the named plaintiffs only); *Mathis v. Darden Rests.*, No. 12 Civ. 61742, 2014 WL 4428171, at *6 (S.D. Fla. Sept. 1, 2014); *Stiller v. Costco Wholesale Corp.*, 298 F.R.D. 611, 630-33 (S.D. Cal. 2014). Such rulings are effectively a death knell for workers' wage and hour claims, due to the imbalance between the cost of litigation and the value of a single individual's claim.

Such risk of decertification was properly balanced in reaching the \$2,750,000 settlement. *See Hanlon*, 150 F.3d at 1027 (reviewing court should defer to "a private consensual agreement negotiated between the parties" familiar with the case regarding appropriateness of settlement); *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (fairness hearing should not be turned into "rehearsal for trial on the merits" but should assess whether settlement taken as whole is fair, reasonable, and adequate).

4. The Settlement Amount Will Fairly And Adequately Compensate Class Members.

The settlement amount, as with any settlement, represents a compromise between receiving full damages and penalties on the one hand, and total defeat (including possible imposition of defense costs) on the other. Indeed, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010). "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the Parties each give up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F.2d at 624 (citation omitted). Accordingly, the

1 settlement is not to be judged against a speculative measure of what might have been achieved. *Linney*
 2 *v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). In the end, “[s]ettlement is the offspring
 3 of compromise; the question we address is not whether the final product could be prettier, smarter or
 4 snazzier, but whether it is fair, adequate and free from collusion.” *Hanlon*, 150 F.3d at 1027.

5 As set forth above, the compromise amount here is fair and adequate.

6 **5. The Extent of Discovery Supports Settlement.**

7 Adequate discovery is required to justify settlement. The touchstone of the analysis is whether
 8 “the parties have sufficient information to make an informed decision about settlement,” including
 9 formal and informal discovery. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).
 10 Plaintiffs have thoroughly probed the factual basis for Class Members’ claims. Sagafi Decl. ¶¶ 13-20.
 11 Before and during the litigation, Class Counsel interviewed and provided guidance to many Class
 12 Members, who provided information regarding their job duties, the hours they worked, and AT&T’s
 13 policies, practices, and organizational structure. *Id.* ¶ 14. In formal discovery, Class Counsel reviewed
 14 and analyzed over 28,000 pages of documents including AT&T corporate policies, payroll and time
 15 tracking data, job descriptions, and other documents related to Class Members’ job duties and
 16 responsibilities. *Id.* ¶ 15. Class Counsel also deposed three supervisors of the named Plaintiffs to
 17 oppose summary judgment. *Id.* Those witnesses’ testimony was informative regarding both liability
 18 and certification issues. *Id.* In summary, the Parties engaged in sufficient investigation to support this
 19 Settlement.

20 **6. Counsel’s Experience And Views Support Approval.**

21 “Great weight is accorded to the recommendation of counsel, who are most closely acquainted
 22 with the facts of the underlying litigation.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
 23 F.R.D. 523, 528 (C.D. Cal. 2004) (citations and internal quotations omitted). Here, Class Counsel
 24 believe that the Settlement is fair, reasonable, and adequate in light of the circumstances of the case.
 25 Class Counsel are experienced attorneys specializing in complex wage and hour class and collective
 26 actions. Sagafi Decl. ¶¶ 4-10; Marsili Decl. ¶¶ 3-17. Over the past many years, they have successfully –
 27 and unsuccessfully – litigated many such cases, putting them in a strong position to weigh the strengths
 28 and weaknesses of Plaintiffs’ claims. Sagafi Decl. ¶¶ 4-10; Marsili Decl. ¶¶ 3-17. AT&T is also

represented by experienced employment attorneys. Independently, their view is that the Settlement merits approval. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (“[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation”) (citations and internal quotations omitted).

In these, and all other respects, the Settlement is fair, reasonable, and adequate, falls within the range of possible approval, and is appropriate for preliminary approval and notice to Class Members.

D. The Proposed Notice Provides Adequate Notice to The Class Members And Affords Them The Right To Be Excluded Or To Object.

The notice here satisfies the requirements that the class notice must be the “best notice that is practicable under the circumstances,” Fed. R. Civ. P. 23(c)(2)(B), and that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Notice is satisfactory “if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal citation and quotation marks omitted). Notice mailed to each class member “who can be identified through reasonable effort” constitutes reasonable notice. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974). For any class certified under Rule 23(b)(3), the notice must inform class members “that the court will exclude from the class any member who requests exclusion,” stating “the time and manner for requesting exclusion.” Fed. R. Civ. P. 23(c)(2)(B)(v)-(vi).

The form of the Notice (and Claim Form) here is consistent with modern best practices set forth by the Federal Judicial Center and was negotiated and agreed upon by counsel for the parties. The notice will inform Class Members of, among other things, (1) the nature of this action, the Settlement Class, Class Counsel, and the essential terms of the Settlement; (2) the allocation of the settlement fund, including how Class Members’ settlement shares are calculated, plus the requests for the Class Representative Service Payments and the Class Counsel Attorneys’ Fees and Costs Payment, and the other payments that will be deducted from the settlement fund; (3) how to participate in the Settlement, including the requirement of signing the Arbitration Agreement to recover a settlement share, and the requirement for Future Opt-Ins to submit a claim form; (4) how to opt out of the Settlement; (5) how to

comment on or object to the Settlement; (6) the final approval process; and (7) how to obtain additional information regarding this action and the Settlement. The notice is written in plain English and is organized and formatted so as to be as clear as possible. It is based on the model notice forms provided by the Federal Judicial Center at www.fjc.gov. The notice encourages Class Members to contact the Settlement Administrator with any questions, and provides Class Counsel's, AT&T's counsel's, and the Settlement Administrator's telephone, mail, e-mail, and web contact information.⁴

The Parties propose that, under the notice plan outlined above, the Class Members will have 45 days from the date Notice is mailed to submit a Claim Form (if applicable), object, or opt out. Sagafi Decl., Ex. 1 (Settlement Agreement), ¶ 19.

The foregoing notice plan provides the best notice practicable under the circumstances and will provide Class Members a full and fair opportunity to consider the terms of the Settlement and make a fully informed decision on whether to participate, to object, or to opt out of the Settlement.

This notice plan is consistent with class certification notices approved by numerous state and federal courts, and is, under the circumstances of this case, the best notice practicable. *See, e.g., Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 475-76 (E.D. Cal. 2009) (holding notice involving similar mail procedures as here meets both Rule 23(e) and Rule 23(c) requirements); *Adams v. Inter-Con Sec. Sys., Inc.*, No. 06 Civ. 5428, 2007 WL 3225466, at *4 (N.D. Cal. Oct. 30, 2007) (Patel, J.) (finding that notice using similar mail procedure as here "satisfies the notice requirements of Rule 23(e), and . . . all other legal and due process requirements").

E. This Court's Guidelines Support Granting Preliminary Approval.

The Settlement and this brief comply with the recommendations and requirements set forth in the Court's Procedural Guidance for Class Action Settlements, <http://cand.uscourts.gov/ClassActionSettlementGuidance> (last visited September 28, 2017).

- There is no difference between the settlement class and the class proposed in the

⁴ The website listed in the notice has been maintained by Class Counsel throughout the litigation and has enabled Class Counsel to keep Class Members updated as to the progress of the litigation. Class Counsel will continue to use this tool to assist Class Members and encourage submission of the Arbitration Agreement and, where applicable, Claim Forms, for those Class Members interested in recovering money from the Settlement.

complaint; nor the 216(b) class conditionally certified.

- There are no substantial differences between the claims to be released and the claims set out in the operative complaint, except that, for only the named Plaintiffs and Witnesses being paid service payments, a general release applies.
- The estimated recovery per class member is provided in the Notice and Claim Form.
- The total damages exposure and estimated actual recovery per class member is above.
- The money from uncashed checks will be redistributed pro rata if feasible, and otherwise sent to the California Industrial Relations Unclaimed Wages Fund.

V. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.

If the Court grants preliminary approval, a date for the final fairness hearing needs to be set and included in the class notice. Plaintiffs, after consultation with AT&T, propose that the Court adopt the following schedule for purposes of effectuating the various steps in the settlement approval process described above.

Event	Proposed Date
Preliminary Approval Hearing	October 12, 2017
Entry of Preliminary Approval Order (assumed for purposes of calculating subsequent dates)	October 19, 2017
AT&T to provide class list data to Administrator	November 2, 2017
Notice disseminated by Settlement Administrator	November 13, 2017
Reminder notices	December 8, 2017
Final approval and fee motions	December 14, 2017
Deadline for Class Members to submit Claim Forms, exclusions, and/or objections	December 28, 2017
Final approval and fee reply briefs	January 11, 2018
Final Approval Hearing	January 25, 2018

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) preliminarily approve the Settlement pursuant to Fed. R. Civ. P. 23(c) and (e) and section 216(b) of the FLSA; (2) preliminarily certify the proposed Settlement Class; (3) approve the proposed class notice and forms; (4) set the deadlines for filing claims, written exclusions, or objections to the Settlement; and (5) schedule a final approval hearing.

Dated: September 28, 2017

Respectfully submitted,

By: /s/ Jahan C. Sagafi
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