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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NATASHA AYALA, et al.,  
Plaintiffs,  
v.  
AT&T MOBILITY SERVICES, LLC, et  
al.,  
Defendants.

Case No. 2:18-cv-08809-FLA (MRWx)

**ORDER GRANTING MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
[DKT. 73]**

**RULING**

Before the court is Plaintiff Kellen Shaw’s (“Plaintiff”) Motion for Preliminary Approval of Class Action Settlement (“Motion”). Dkt. 73. Plaintiff moves for preliminary approval of the settlement of this putative class action. Defendant AT&T Mobility Services LLC (“Defendant”) does not oppose the Motion.

On June 29, 2022, the court found this matter appropriate for resolution without oral argument and vacated the hearing set for July 8, 2022. Dkt. 77; *see* Fed. R. Civ. P. 78(b); Local Rule 7-15. For the reasons stated herein, the court GRANTS Plaintiff’s Motion and preliminarily APPROVES the Class Action Settlement.

**BACKGROUND**

1  
2 On August 22, 2018, Natasha Ayala (“Ayala”) filed a class action complaint  
3 against Defendant in the Los Angeles Superior Court. Dkt. 1-2. On October 15,  
4 2018, Defendant removed the action to this court under the Class Action Fairness Act.  
5 Dkt. 1. On December 10, 2018, Ayala filed a First Amended Complaint. Dkt. 14.

6 On April 1, 2019, Ayala filed a Motion for Class Certification and a Motion for  
7 Leave to file a Second Amended Complaint (“SAC”). Dkts. 28, 30. On April 25,  
8 2019, the court granted Ayala leave to file a SAC and ordered a renewed Motion for  
9 Class Certification be filed. Dkt. 37. Ayala filed those pleadings on April 29, 2019,  
10 and June 3, 2019, respectively. Dkts. 38, 40. On September 25, 2019, after  
11 determining Ayala was not an adequate class representative and her claims were not  
12 typical of the putative class, the court denied the Renewed Motion for Class  
13 Certification with leave to amend to add a new class representative. Dkt. 51.

14 On October 16, 2019, Ayala filed a Third Amended Complaint (“TAC”),  
15 replacing Ayala with Plaintiff Shaw as the proposed Rule 23 class representative.  
16 Dkt. 52. Ayala maintained her Private Attorneys General Act (“PAGA”) claim.<sup>1</sup> *Id.*  
17 The TAC asserts a violation of the California Business and Professions Code, and  
18 numerous violations of the California Labor Code. *Id.* On September 29, 2021,  
19 Defendant filed a Motion to Dismiss the TAC which was taken under submission.  
20 Dkt. 62.

21 On November 2, 2021, preliminary approval of class action settlement was  
22 granted in a related case pending in San Bernardino County Superior Court, Case No.  
23 CIVSB2217915 (the “Wallack” action). Dkt. 73-1 (“Mot. Br.”) at 11; Dkt. 74-4<sup>2</sup>. The  
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25 <sup>1</sup> Ayala reached a separate settlement with Defendant, and on June 6, 2022, the court  
26 dismissed Ayala’s individual claims with prejudice and Ayala’s PAGA cause of action  
27 without prejudice. Dkts. 75-76.

28 <sup>2</sup> The court GRANTS Plaintiff’s Request for Judicial Notice (Dkt. 74) and takes notice  
of Exhibits A-E.

1 *Wallack* settlement involved a larger settlement class that overlaps and subsumes the  
2 putative class in this matter from August 1, 2015, to November 2, 2021. Dkt. 74-1 at  
3 12-39.

4 On February 4, 2022, the parties submitted a Notice of Settlement covering  
5 claims at-issue in this action for the period preceding the *Wallack* settlement. Dkt 67.  
6 On February 22, 2022, in light of the settlement, the court denied Defendant's Motion  
7 to Dismiss as moot. Dkt. 68. The parties' final agreement is set forth in the Class  
8 Action Settlement Agreement. Dkt. 73-3 ("Settlement"). Plaintiff now seeks  
9 preliminary approval of the settlement.

## 10 SETTLEMENT TERMS

### 11 **I. Proposed Class**

12 The settlement class is defined as: All current and former hourly non-exempt  
13 employees who worked for AT&T Mobility Services LLC at any call center in the  
14 State of California at any time from August 22, 2014, to July 31, 2015, and received  
15 commission payments. Settlement ¶ 2.

### 16 **II. Payment Terms**

17 In full settlement of the claims asserted in this lawsuit, Defendant agrees to pay  
18 a non-reversionary gross settlement amount of \$150,000. Mot. Br. at 12; Settlement ¶  
19 29. This results in a net settlement amount of \$75,500 after attorney's fees, litigation  
20 costs, Plaintiff's service award, and settlement administration costs are subtracted  
21 from the gross fund. *Id.* In addition, Defendant will also pay the employer-side of  
22 payroll taxes arising from any portion of the settlement shares attributable to wages.  
23 *Id.* Defendant retains the right to rescind the settlement if 5% or more of the class  
24 members, or number of potential class members with settlement shares representing  
25 5% or more of the total of all settlement shares, validly elect not to participate in the  
26 settlement. Mot. Br. at 13; Settlement ¶ 44.

27 The participating class members who do not timely opt-out of the settlement  
28 will receive a pro rata share of the net settlement amount based on the number of

1 weeks worked in each position covered by the Settlement during the relevant time  
2 frame. Mot. Br. at 13, Settlement ¶ 33. Twenty-five percent of each class member  
3 payment will be allocated as W-2 wages subject to reduction for typical withholdings  
4 and taxes, and the remaining seventy-five percent as 1099 payments for penalties and  
5 interests. Mot. Br. at 13, Settlement ¶ 34.

6 **III. Attorney’s Fees, Costs, and Service Awards**

7 The settlement authorizes class counsel to petition the court for approval of  
8 attorney’s fees in an amount equal to 33.33% of the gross settlement amount  
9 (\$50,000) and reimbursement of litigation expenses not to exceed \$7,500 for litigation  
10 costs incurred. Settlement ¶ 30.

11 Class counsel will also petition the court for approval of a service payment of  
12 \$5,000 to Plaintiff Shaw. *Id.* ¶ 31.

13 **IV. Releases**

14 The settlement requires class members that do not timely opt-out to “fully  
15 release and discharge Defendant and the Released Parties of any and all known and  
16 unknown Covered Claims as alleged in, and that could have been reasonably alleged  
17 based on the facts of, the Third Operative Complaint, for the Covered Period [of  
18 August 22, 2014, to July 31, 2015].” *Id.* ¶ 37.

19 In addition to the other terms and conditions of the settlement and in  
20 consideration of the service payment to Plaintiff Shaw, Plaintiff Shaw releases “any  
21 and all of her known and unknown claims against Defendant and the [Released  
22 Parties], and waives the protection of California Civil Code Section 1542.” *Id.* ¶ 36.

23 **V. Dismissal of Non-Covered Claims**

24 The Non-Covered Claims alleged in this action, meaning claims after August 1,  
25 2015, will be dismissed without prejudice. *Id.* ¶ 38.

26 **VI. Notice to Settlement Class**

27 All class members will be mailed a notice with information regarding the nature  
28 of the litigation, a summary of the terms of the settlement, instructions for opting out

1 or objecting to the settlement, details on the final settlement approval hearing, and  
2 claims to be released by class members that do not opt-out. Settlement at 27-32  
3 (Exhibit A, Notice).

## 4 **DISCUSSION**

5 The court must first address whether the class may be preliminarily certified for  
6 settlement purposes only, before evaluating the fairness, adequacy, and reasonableness  
7 of the proposed Settlement, and reviewing the adequacy of the proposed notice.

### 8 **I. Class Certification**

9 Class certification is a prerequisite to preliminary settlement approval. *See*  
10 *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (“[A]lthough the  
11 fact of settlement is relevant to the class certification analysis, certification must  
12 nonetheless meet Rule 23(a) and (b)[ ] requirements...”). Class certification is  
13 appropriate only if each of the four requirements of Rule 23(a) and at least one of the  
14 requirements of Rule 23(b) are met. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,  
15 614 (1997). Under Rule 23(a), the plaintiff must show: “(1) the class is so numerous  
16 that joinder of all members is impracticable; (2) there are questions of law and fact  
17 common to the class; (3) the claims or defenses of the representative parties are  
18 typical of the claims or defenses of the class; and (4) the representative parties will  
19 fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a).

#### 20 **A. Rule 23(a) Requirements**

21 The proposed class meets each of the Rule 23(a) factors for purposes of the  
22 subject Motion. First, the proposed class is sufficiently numerous. While “[n]o exact  
23 numerical cut-off is required,” “numerosity is presumed where the plaintiff class  
24 contains forty or more members.” *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628,  
25 634 (C.D. Cal. 2009). Plaintiff represents that there are approximately 420 potential  
26 members of the class. Mot. Br. at 15. Numerosity is satisfied.

27 Second, the claims appear to involve questions of fact and law common to the  
28 class. The “commonality” requirement of Rule 23(a)(2) is minimal and “only requires

1 a single significant question of law or fact” common to putative class members.  
2 *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 589 (9th Cir. 2012), *overruled in*  
3 *part on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods*  
4 *LLC*, 31 F.4th 651, 682 n. 31 (9th Cir. 2022). Commonality requires the plaintiff to  
5 demonstrate that the class members’ claims depend upon a common contention that is  
6 “of such a nature that it is capable of classwide resolution—which means that  
7 determination of its truth or falsity will resolve an issue that is central to the validity  
8 of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.  
9 338, 350 (2011); *see id.* (“What matters to class certification ... is not the raising of  
10 common ‘questions’ ... but, rather, the capacity of a classwide proceeding to generate  
11 common *answers* apt to drive the resolution of the litigation”).

12 Here, the claims of the class members appear to turn on Defendant’s alleged  
13 uniform policies and procedures. Mot. Br. at 16. This includes whether Defendant  
14 failed to pay class members the full amount of overtime wages and failed to provide  
15 paid rest periods. *Id.* Accordingly, the court preliminarily finds Defendant’s practices  
16 establish significant common questions of fact and law sufficient to satisfy  
17 commonality.

18 Third, Plaintiff meets the typicality requirement. Typicality in this context  
19 means that the representative’s claims are “reasonably co-extensive with those of  
20 absent class members; they need not be substantially identical.” *Hanlon v. Chrysler*  
21 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by Wal-Mart*,  
22 564 U.S. 338 (2011), *as recognized in In re Volkswagen “Clean Diesel” Mktg., Sales*  
23 *Pracs., & Prods. Liab. Litig.*, 975 F.3d 770, 777-78 (9th Cir. 2020). Here, Plaintiff’s  
24 claims arise from the same alleged uniform policies and practices—specifically, that  
25 as a former hourly non-exempt employee, Plaintiff was paid pursuant to Defendant’s  
26 policy and pay practices, including working under a practice of not paying overtime at  
27 the correct regular rate of pay, failing to provide non-captive rest periods, and failing  
28 to pay meal period premiums at the regular rate of pay. *See* Mot. Br. at 17. These

1 claims are based on the same facts and same legal theories applicable to the rest of the  
2 class members. Accordingly, the court preliminarily finds typicality is satisfied.

3 Finally, Plaintiff and class counsel satisfy the adequacy requirement for  
4 representing absent class members. This requirement is met where the named plaintiff  
5 and class counsel do not have conflicts of interest with other class members and will  
6 vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at 1020. Here,  
7 Plaintiff's interests appear to be coextensive with the interests of the class, and there is  
8 no evidence to suggest Plaintiff or class counsel have any conflict of interest with  
9 other class members. Additionally, counsel appears to be well-qualified to handle this  
10 class action litigation, with substantial experience litigating, certifying, and trying  
11 wage and hour class actions. *See* Mot. Br. at 18; Dkt. 73-2 ("Hatcher Decl.") at 2-10.  
12 Counsel has been diligent in pursuing this action since its filing in October 2018. *See*  
13 Dkts. 1, 51. Accordingly, adequacy of representation is met for purposes of the  
14 subject Motion.

#### 15 **B. Rule 23(b)(3) Requirements**

16 Next, Plaintiff seeks certification under Rule 23(b)(3), which requires the court  
17 to find "the questions of law or fact common to class members predominate over any  
18 questions affecting only individual members, and that a class action is superior to  
19 other available methods for fairly and efficiently adjudicating the controversy." Fed.  
20 R. Civ. P. 23(b)(3). "The requirement is satisfied if a plaintiff establishes that a  
21 'common nucleus of facts and potential legal remedies dominates' the litigation."  
22 *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 473 (E.D. Cal. 2009) (quoting *Hanlon*,  
23 150 F.3d at 1022).

24 As stated, questions of law and fact common to the putative class members  
25 predominate over individualized inquiries. All claims concern the same alleged  
26 uniform policies, practices, and standards, and the question of whether Defendant  
27 violated federal and state laws. These common questions represent a common nucleus  
28 and can be resolved for all class members in a single adjudication. Further, a class



1 action appears to be a far superior method of adjudicating the claims, as it would be  
2 inefficient for all potential members to bring individual actions and needlessly costly  
3 for each class member to bring these actions alone. Accordingly, the court finds that  
4 Rule 23(b)(3) is satisfied for purposes of the subject Motion.

5 **C. Conclusion Regarding Class Certification**

6 As each of the four requirements of Rule 23(a) and at least one of the  
7 requirements of Rule 23(b) are met, the court GRANTS certification of the proposed  
8 class for settlement purposes.

9 **II. Preliminary Approval of the Proposed Class Settlement**

10 The court next considers whether the proposed settlement warrants preliminary  
11 approval. Under Rule 23(e)(2), the court must find the proposal fair, reasonable, and  
12 adequate after considering whether:

- 13 (A) the class representatives and class counsel have adequately represented the  
14 class;  
15 (B) the proposal was negotiated at arm's length;  
16 (C) the relief provided for the class is adequate, taking into account:  
17 (i) the costs, risks, and delay of trial and appeal;  
18 (ii) the effectiveness of any proposed method of distributing relief to the  
19 class, including the method of processing class-member claims;  
20 (iii) the terms of any proposed award of attorneys' fees, including timing  
of payment; and  
21 (iv) any agreement required to be identified under Rule 23(e)(3); and  
22 (D) the proposal treats class members equitably relative to each other.

23 Fed. R. Civ. P. 23(e)(2).

24 **A. Adequacy of Representation and Arm's Length Negotiations**

25 As stated, the course of the proceedings indicates Plaintiff and class counsel  
26 have adequately represented the class in this action. For the same reasons, the court is  
27 satisfied that the settlement agreement was the product of "serious, informed, non-  
28 collusive negotiations." *See Spann*, 314 F.R.D. at 319. Settlement was reached after  
counsel vigorously litigated this matter, with the complaint having been filed over  
four years ago. *See* Dkt. 1. In that time, the parties conducted discovery and engaged



1 in motion practice including two sets of requests for production, two sets of  
2 interrogatories, two depositions, four motions to compel, two motions for  
3 certification, a motion for leave to amend, and a motion to dismiss. Mot. Br. at 22-23;  
4 Hatcher Decl. ¶ 10. Additionally, settlement was reached after preliminary approval  
5 of the overlapping *Wallack* class action, and after the parties had sufficient  
6 information and documentation to consider the facts, potential damages, and legal  
7 issues in the action. Hatcher Decl. ¶¶ 9, 12. Accordingly, these two factors weigh in  
8 favor of preliminary approval. *See* Fed. R. Civ. P. 23(e)(2)(A)-(B).

### 9 **B. Adequacy of Relief**

10 The settlement and relief provided appears to be adequate considering the  
11 factors set out by Rule 23(e)(2)(C). First, as with litigation generally, there is a risk to  
12 both parties in continuing toward trial. “[I]t is the very uncertainty of outcome in  
13 litigation and avoidance of wasteful and expensive litigation that induce consensual  
14 settlements. The proposed settlement is [thus] not to be judged against a hypothetical  
15 or speculative measure of what might have been achieved by the negotiators.”  
16 *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco*, 688 F.2d  
17 615, 624 (9th Cir. 1982). “Even a fractional recovery of the possible maximum  
18 recovery amount may be fair and adequate in light of the uncertainties of trial and  
19 difficulties in proving the case.” *Millan*, 310 F.R.D. at 611. Here, the parties reached  
20 settlement after more than four years of litigation, but before resolution of  
21 Defendant’s Motion to Dismiss Third Amended Complaint and Motion to Strike, and  
22 before filing of a fourth amended complaint and renewed motion for class  
23 certification. *See* Dkts. 54, 59, 62. The additional litigation costs, risks, and delay of  
24 trial and appeal favor preliminary approval. *See* Mot. Br. at 25-28.

25 Next, the proposed method of relief of distribution is straightforward and  
26 effective. The class members that do not timely opt-out will receive a pro rata share  
27 of the net settlement amount—no other action needs to be taken by class members,  
28 and there is no risk of unjustified claims. *See* Fed. R. Civ. P. 23(e), 2018 Advisory

1 Committee Notes (“Often it will be important for the court to scrutinize the method of  
2 claims processing to ensure that it facilitates filing legitimate claims.”).

3 Further, the requested attorney’s fee award appears reasonable. The district  
4 court has discretion to choose either percentage-of-the-fund or the lodestar method to  
5 determine what constitutes a reasonable fee. *Vizcaino v. Microsoft Corp.*, 290 F.3d  
6 1043, 1047 (9th Cir. 2002). In class actions, courts routinely award a percentage of  
7 the common fund, with a benchmark of 25% that may be adjusted when circumstances  
8 indicate a higher or lower percentage would be appropriate. *In re Pac. Enters. Sec.*  
9 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). Here, Plaintiff intends to apply for attorney’s  
10 fees in an amount not to exceed thirty percent of the gross fund, or \$50,000. Mot. Br.  
11 29. Class counsel’s motion for attorney’s fees will provide a lodestar cross-check  
12 against the common fund percentage method. *Id.* The court finds these terms  
13 appropriate. This factor weighs in favor of preliminary approval.<sup>3</sup> *See* Fed. R. Civ. P.  
14 23(e)(2)(C).

### 15 C. Equitable Treatment

16 Next, the court finds that the settlement does not provide improperly  
17 preferential treatment to any class members. The agreement tailors the apportionment  
18 of relief among class members based on the number of weeks each member worked  
19 during the covered period, compared to total weeks worked by all class members  
20 during the covered period. Mot. Br. 28-29.

21 This means that each class member who does not timely opt-out will receive a  
22 pro rata share of the net settlement amount based on the number of weeks he or she  
23 worked in each position covered by the settlement, during the covered period, with the  
24 pro rata calculation being a result of 1) dividing the net settlement amount by the total  
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27 <sup>3</sup> The court must also evaluate any agreement made in connection with the proposed  
28 settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Plaintiff states there is no  
agreement made outside of the settlement agreement itself. Mot. Br. at 30.

1 number of work weeks for class members for the covered period, and 2) multiplying  
2 the result by the number of work weeks attributable to each participating class  
3 member during the covered period. *Id.* This final factor weighs in favor of  
4 preliminary approval. *See* Fed. R. Civ. P. 23(e)(2)(D).

#### 5 **D. Conclusion Regarding Preliminary Approval**

6 As each of the Rule 23(e)(2) factors weighs in favor of approval, the court  
7 GRANTS preliminary approval of the class action settlement.

#### 8 **III. Sufficiency of Notice**

9 Under Rule 23, “the court must direct to class members the best notice that is  
10 practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). Class notice must  
11 state “(i) the nature of the action; (ii) the definition of the class certified; (iii) the class  
12 claims, issues, or defenses; (iv) that a class member may enter an appearance through  
13 an attorney if the member so desires; (v) that the court will exclude from the class any  
14 member who requests exclusion; (vi) the time and manner for requesting exclusion;  
15 and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).”  
16 Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii). Notice is satisfactory if it “generally describe[s]  
17 the terms of the settlement in sufficient detail to alert those with adverse viewpoints to  
18 investigate and to come forward and be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811,  
19 826 (9th Cir. 2012) (internal quotation marks omitted). It “does not require detailed  
20 analysis of the statutes or causes of action forming the basis for the plaintiff class’s  
21 claims, and it does not require an estimate of the potential value of those claims.” *Id.*

22 Here, the proposed Notice contains the information required under Rule  
23 23(c)(2)(B). *See* Settlement at 27-32 (Exhibit A, Notice). Defendant will identify and  
24 provide last-known information regarding each class member to the settlement  
25 administrator. *Id.* at 13. If any class member data is unavailable to Defendant,  
26 Defendant will use best efforts to deduce or reconstruct it prior to submitting to the  
27 settlement administrator. *Id.* The settlement administrator will then determine each  
28 class member’s estimated settlement share and mail the class notice packet by First-

1 Class U.S. Mail. *Id.* In the event of returned or non-deliverable notices, the  
2 settlement administrator will make reasonable efforts, including skip trace methods, to  
3 locate the correct address and re-send the notices. *Id.* at 13-14. The court finds this  
4 notice plan sufficient and practical. *See* Fed. R. Civ. P. 23(c)(2)(B).


5 **CONCLUSION**

6 For the aforementioned reasons, the court GRANTS Plaintiff's Motion for  
7 Preliminary Approval of Class Action Settlement. The court GRANTS preliminary  
8 approval of the settlement, preliminarily CERTIFIES the class for settlement  
9 purposes, and APPROVES the proposed notice. The court also APPROVES class  
10 counsel, the class representative, and settlement administrator. Plaintiff's Motion for  
11 service award and for class counsel's fees and costs shall be filed in accordance with  
12 the settlement provisions. *See* Settlement ¶ 45(a).

13 The final approval hearing shall be held on October 13, 2023, at 1:30 p.m. in  
14 Courtroom 6B of the United States Courthouse, located at 350 West First Street, Los  
15 Angeles, California 90012.

16  
17 IT IS SO ORDERED.

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19 Dated: June 20, 2023

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22 FERNANDO L. AENLLE-ROCHA  
23 United States District Judge  
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