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14 State of California

15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF ALAMEDA**

17 EDGAR DIAZ and JOE TRIGO, individually  
and on behalf of all others similarly situated,

18 Plaintiffs,

19 vs.

20 TAK COMMUNICATIONS CA, INC.; TAK  
21 COMMUNICATIONS, INC.; and DOES 1-25,  
inclusive,

22 Defendants.  
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Case No: RG20064706

CLASS ACTION

*Assigned for All Purposes to Judge Y. Winifred  
Smith, Dept. 21*

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

Date: December 11, 2020

Time: 10:00 a.m.

Reservation Number: R-2220979

Date Action Filed: June 12, 2020

1                   **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF**  
2                   **CLASS-ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS,**  
3                   **APPROVAL OF NOTICE OF SETTLEMENT, AND SETTING OF HEARING FOR**  
4                   **FINAL APPROVAL**

5                   TO DEFENDANTS TAK COMMUNICATIONS CA, INC. and TAK  
6 COMMUNICATIONS, INC. (“TAK”), ITS ATTORNEYS OF RECORD, AND THE COURT:  
7 PLEASE TAKE NOTICE that on December 11, 2020, at 10:00 a.m., or as soon thereafter as the  
8 matter may be heard in Department 21 of the Superior Court of California, County of Alameda,  
9 located at 1221 Oak Street Oakland, CA 94612, the Honorable Winifred Y. Smith presiding,  
10 Plaintiffs Edgar Diaz and Joe Trigo, on behalf of themselves and all others similarly situated  
11 (“Plaintiffs”), will and hereby do move for an order:

- 12                   1. Granting preliminary approval of the Settlement and the Settlement Class based upon  
13                   the terms set forth in the Class Action Settlement Agreement and Release  
14                   (“Settlement”) filed herewith as **Exhibit 1** to the Declaration of Carolyn Hunt Cottrell;
- 15                   2. Finding that the Settlement appears to be fair, adequate, and reasonable to the Class;
- 16                   3. Setting a final fairness hearing on the question of whether the proposed Settlement,  
17                   attorneys’ fees to Class Counsel, and Service Awards should be finally approved as  
18                   fair, reasonable, and adequate as to the members of the Class in Department 21 on the  
19                   date and time set forth according to the implementation schedule in Paragraph 10  
20                   below;
- 21                   4. Approving, as to form and content, the Notice of Class Action Settlement (“Notice”), in  
22                   substantially the form attached to the Settlement as **Exhibit A**, and also approving the  
23                   procedure for Class Members to participate in, to opt out of, and to object to, the  
24                   Settlement as set forth in the Settlement Agreement and Notice;
- 25                   5. Directing the mailing of the Notice of Class Action by first class mail to the Class  
26                   Members in accordance with the implementation schedule set forth below, and finding  
27                   the dates selected for the mailing and distribution of the Notice of Class Action, as set  
28                   forth in the implementation schedule, meet the requirements of due process and provide  
                     the best notice practicable under the circumstances and shall constitute due and  
                     sufficient notice to all persons entitled thereto;
6. Ordering that the Settlement Class is preliminary certified for settlement purposes only;
7. Ordering that the Settlement Collective is preliminary certified for settlement purposes  
                     only;

8. Confirming Plaintiffs Edgar Diaz and Joe Trigo as Class Representatives, and Schneider Wallace Cottrell Konecky LLP and Berger Montague PC as Class Counsel;
9. Confirming Heffler Claims Group as the Settlement Administrator;
10. To facilitate administration of the Settlement pending final approval, issuing an order enjoining Plaintiffs and all Class Members from filing or prosecuting any claims, suits, or administrative proceedings (including filing claims with the Division of Labor Standards Enforcement of the California Department of Industrial Relations) regarding claims released by the Settlement, unless and until such Class Members have filed valid Request Not to Participate in Settlement with the Settlement Administrator; and
11. Ordering the following Implementation Schedule for further proceedings:

Preliminary Approval Granted	TBD
Class list provided to Settlement Administrator by Defendants	Ten (10) business days after preliminary approval of the Settlement is granted
Deadline for Settlement Administrator to mail and email the Notice	Ten (10) business days after the Settlement Administrator receives the Class List
“Notice Deadline:” Deadline to opt-out/object and/or to dispute the number of workweeks worked	Sixty (60) days after the Settlement Notice is initially mailed to the Settlement Class.
Settlement Administrator will provide a declaration of due diligence and proof of mailing with regard to the mailing of the Notice to counsel of all Parties	Ten (10) business days after the Notice Deadline
Deadline to file Final Approval Motion	TBD
Final Approval Hearing	At least thirty (30) days after the Notice Deadline
Effective Date	(i) if there is an objection(s) to the settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court’s Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then after such appeal(s) is dismissed or the Court’s Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court’s order granting Final Approval of the Settlement
Deadline for Defendant to pay \$1,200,000.00 to the Settlement Administrator’s Qualified	Ten (10) business days after the Effective Date

1 2 3 4	Settlement Fund to make payments to Participating Class and Collective Members, the Class Representative Payment, the PAGA Payment, and the Class Counsel Fees and Costs Payment, together with the applicable amount of the employer's share of payroll taxes	
5 6	Deadline for the Settlement Administrator to mail or wire all required payments to the Named Plaintiffs, the LWDA, to Class Counsel, and to Participating Class and Collective Members	Thirty (30) business days after the Effective Date or as soon as reasonably practicable
7 8	Checks for the Individual Settlement Payments will become void and no longer available if not cashed	One hundred and eighty (180) days from the date of the checks' issuance
9 10 11	Funds from uncashed checks to be redistributed to those Class and Collective Members who timely cashed their settlement checks if the residual amount is or is more than \$50,000, or to revert in <i>cy pres</i> if the residual amount is less than \$50,000	At the conclusion of the check-cashing period
12 13 14	Deadline for Plaintiffs and Settlement administrator to provide written certification of such completion to the Court, Class Counsel and Defendants' Counsel	Twenty-one (21) days after the distribution of remaining monies from uncashed checks

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16 Dated: November 17, 2020

17 Respectfully submitted,

18 SCHNEIDER WALLACE  
19 COTTRELL KONECKY LLP

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Carolyn Hunt Cottrell

22 Attorneys for Plaintiffs, the Putative Class,  
23 and Aggrieved Employees