

Diaz v. TAK Communications CA, Inc., et al.,
Superior Court of California, County of Alameda, Case Number RG20064706

NOTICE OF SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY.

You received this Notice of Settlement (“Notice”) either because you (1) previously completed an Opt-In Consent Form to join this case; or (2) you did not previously join this case but the records of TAK Communications CA, Inc. and TAK Communications, Inc. (collectively, “Defendants”) show you performed work for Defendants in the United States of America sometime between May 22, 2019 and August 4, 2020. Because you fit this definition, **you may be entitled to receive money from a Settlement¹ in this case, as described below.**

NOTE: If you performed work for Defendants in the State of California sometime between May 22, 2019 and August 4, 2020, unless you opt out of the Settlement, you will receive money for your California state law claims as a California Class Member, and you will release those California state law claims. If you cash or deposit your Settlement check, you will also release your federal Fair Labor Standards Act (“FLSA”) claims relating to your work performed for Defendants in any state other than the State of California.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself (“opt out”) of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California, County of Alameda, has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on April 23, 2021 at 10:00 a.m., before the Honorable Winifred Y. Smith at Department 21 of the Superior Court of California, County of Alameda, 1221 Oak Street Oakland, CA 94612 .

2. What Is This Case About?

This lawsuit alleges that individuals whom Defendants employed as non-exempt employees and who worked as technicians for Defendants between May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020, were not provided meal and rest breaks, were not compensated for all hours worked, were not paid minimum, straight time, overtime, or double time wages, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, and were not reimbursed for necessary business expenses. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under

¹ This notice summarizes the proposed Settlement. The capitalized terms in this Notice of Settlement have defined meanings that are set out in detail in the Settlement Agreement. To review a copy of the Settlement Agreement, please visit the Settlement website at www.TAKSettlement.com.

the California Labor Code Private Attorneys General Act (“PAGA”), restitution, interest, attorneys’ fees and costs. The claims in this lawsuit are brought under federal and California law.

Defendants contend that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that the wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, rest breaks, and expense reimbursement, are lawful and have been lawful throughout the relevant time period. Defendants also contend that Plaintiffs’ claims do not meet the requirements for class certification or collective treatment.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

The Settlement Administrator has created a Settlement Website, which can be accessed at www.TAKSettlement.com. The Settlement Website allows interested persons to view the Settlement Agreement, all papers filed by Class Counsel to obtain Court approval of the Settlement Agreement, and this Notice of Settlement (in generic form). The Settlement Website also provides contact information for Class Counsel and the Settlement Administrator.

3. What Are the Terms of the Settlement?

Defendants have agreed to pay One Million Two Hundred Thousand Dollars (\$1,200,000) to settle this lawsuit (“Gross Settlement Amount”). Deductions from this amount will be made for attorneys’ fees and costs for Class Counsel (up to \$399,999.99, plus attorneys’ costs not to exceed \$20,000; see Section 9 below), Settlement Administration Costs (not to exceed \$27,500), a Service Award in the amount not to exceed Ten Thousand Dollars (\$10,000) each to Named Plaintiff Edgar Diaz and Plaintiff Joe Trigo respectively for their service to the Settlement Class, and penalties of Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250) to the Labor and Workforce Development Agency. After deductions of these amounts, what remains of the Gross Settlement Amount (the total of the “Net Settlement Amount” and “Net PAGA Amount”) will be available to pay monetary Settlement Awards to (i) Named Plaintiffs; (ii) Opt-In Plaintiffs, and (iii) all Settlement Class Members who do not opt out of the Settlement Class (collectively, “Participating Individuals”).

The following persons will be eligible to receive a monetary award from the Net Settlement Amount: (1) Named Plaintiffs; (2) individuals who have submitted Opt-In Consent Forms in the federal lawsuit *Diaz, et al. v. TAK Communications CA, Inc., et al*, California District Court, Eastern District of California, Case No. 2:20-at-00481, on or before June 26, 2020 or who demonstrate that they would have opted-in to the federal lawsuit between June 26, 2020 and August 1, 2020 but for the dismissal of the federal lawsuit, as of August 4, 2020, and worked as technicians for Defendants between May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020; and (3) all individuals who worked for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California.

Individuals who worked for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California will also be eligible to receive a monetary award from the Net PAGA Amount.

4. How Much Can I Expect to Receive?

All Participating Individuals will receive a *pro rata* share of the Net Settlement Amount based on the total number of eligible workweeks that the Participating Individual worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period. Participating Individuals shall receive a *pro rata* portion of the Net Settlement Amount as follows:

1. For each week during which the Participating Individual worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. at any time from May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, through August 4, 2020, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Participating Individual worked. Each workweek will be equal to one (1) settlement share. To reflect the increased value of California state law claims, workweeks during which work was performed in California will be equal to three (3) settlement shares.
2. The total number of settlement shares for all Participating Individuals will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Individual's number of settlement shares to determine the Participating Individual's share of the Net Settlement Amount.

Participating Individuals who worked for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California shall also receive an equal share of the Net PAGA Amount (i.e., \$8,750). The total number of eligible Participating Individuals will be divided into the Net PAGA Amount. The resulting Net PAGA Amount per Participating Individual, if any, will be added to the Participating Individual's share of the Net Settlement Amount, to determine the Participating Individual's Settlement Award.

All Settlement Award determinations will be based on Defendants' timekeeping, payroll, and/or other records for Settlement Class members. According to records maintained by Defendants, your total estimated settlement payment will be at least \$____. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as set forth above. Based on Defendants' records, you are estimated to have worked _____ workweeks for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period in the State of California and _____ workweeks for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period outside the State of California.

If you dispute the number of workweeks as shown on this Notice of Settlement, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. To do so, send a letter to the

Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendants' records, your Settlement Award will be determined based on Defendants' records. Any disputes must be postmarked by March 15, 2021 and should be mailed to Diaz v. TAK Communications, c/o Settlement Administrator, P.O. Box 41, Warminster, PA 18974-0041. The Settlement Administrator will notify you of the decision on the dispute.

For tax reporting purposes, Settlement Awards to Participating Individuals will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties; for the remainder of each Settlement Award, one-third (33.33%) of each Settlement Award shall be allocated as wages, one-third (33.33%) of each Settlement Award shall be allocated as penalties, twenty-three and one-third percent (23.33%) of each Settlement Award shall be allocated as interest, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Individuals should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the Parties' agreed upon *cy pres* recipient, Legal Aid at Work, subject to the Court's approval in the Final Approval Order, if the total residual amount is less than \$50,000. If the total residual amount is \$50,000 or greater, a second distribution will occur to those Participating Individuals who cashed their check on a *pro rata* basis.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are The Releases?

Upon Final Approval of the Settlement Agreement and payment of amounts set forth under the Settlement, all Participating Individuals release claims as follows ("Released Claims") against TAK Communications CA, Inc. and TAK Communications, Inc., their present and former parent companies, subsidiaries, related or affiliated companies, and their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Releasees"):

- **Opt-In Plaintiffs:** Participating Individuals release all Releasees from any and all claims from May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, through November 4, 2020 under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, based on or arising out of the same factual predicates of the Action.
- **California Class Members:** The California Class Members release the Releasees from any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, from May 22, 2019 through November 4, 2020 including: (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation (including, but not limited to, wages, minimum wage, straight time, overtime, bonuses, incentive compensation, and/or premium pay), meal or

rest period premiums or penalties, reimbursement of business expenses, improper wage statements, improper recordkeeping, unfair business practices, including related premiums, statutory penalties, civil penalties, liquidated damages, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy. As to California Class Members who are not Opt-In Plaintiffs and who cash, deposit, or otherwise negotiate their Settlement Award checks shall also release any and all claims against the Releasees under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, arising from or related to their work for Defendants in California, based on these same factual predicates. Those California Class Members who are not Opt-In Plaintiffs and who do not cash or deposit their Settlement Award checks, shall not release any claims against the Released Parties under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

- The release period for PAGA claims runs from May 22, 2019 through November 4, 2020.

NOTE: If you cash, deposit, or otherwise negotiate your Settlement Check, you will also release your Federal FLSA claims relating to your work in the State of California, as applicable.

6. What Are My Rights?

- **Do Nothing:** If you are a Settlement Class Member and do not timely and validly opt-out, you will automatically become a part of the Settlement Class and receive your prorated Settlement Award, and will be bound by the Settlement including its release provisions.
- **Opt-Out:** If you are a member of the Settlement Class and do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement (“opt-out”), postmarked by March 15, 2021. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at Diaz v. TAK Communications, c/o Settlement Administrator, P.O. Box 41, Warminster, PA 18974-0041. **Any person who requests exclusion (opts out) of the Settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- **Object:** If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by March 15, 2021. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. The statement must be mailed to the Court at the following address: Department 21 of the Superior Court of California, County of Alameda, 1221 Oak Street Oakland, CA 94612. You must also mail a copy of your objection to Class Counsel and counsel for TAK Communications CA, Inc. and TAK Communications, Inc., at the addresses listed in Section 8 of this Notice by March 15, 2021.

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with

the Court and served upon Class Counsel and Defendants' counsel on or before the Notice Deadline. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defendants' counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Court and counsel for the Parties postmarked no later than April 9, 2021, orally at the Final Approval hearing, or as otherwise ordered by the Court.

7. Can Defendants Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Defendants or future work or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this Lawsuit. In fact, Defendants encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and the Settlement Class are represented by the following attorneys acting as Class Counsel:

Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
**SCHNEIDER WALLACE
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9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$1,200,000. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of \$1,200,000 (i.e., \$399,999.99) plus their out-of-pocket costs, not to exceed \$20,000. Class Counsel will file a Motion for

Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where can I get more information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at the Settlement Website at www.TAKSettlement.com, by contacting Class Counsel toll-free at (800) 689-0024, by accessing the Court docket in this case for a fee through the Court's electronic public records system at <https://publicrecords.alameda.courts.ca.gov/prs>, or by visiting the office of the Clerk of the Court for the Superior Court of Alameda, 1225 Fallon Street, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE; TAK COMMUNICATIONS CA, INC.; OR TAK COMMUNICATIONS, INC. FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.