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Superior Court of California
County of Los Angeles

SEP 12 2018

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SAEED HESAMI, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

COMMUNITY BANK and DOES 1 through
10, inclusive,

Defendants.

Case No.: BC640235

(Tentative) ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: September 12, 2018

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Saeed Hesami sues his former employer, Defendant Community Bank, for alleged wage and hour violations. Defendant is a provider of personal and business banking and wealth management services, with locations throughout California. Plaintiff seeks to represent a class of Defendant's current and former Relationship Manager employees.

On November 9, 2016, Plaintiff filed his initial class action complaint alleging: (1) Failure to Pay Overtime; (2) Meal Period Violations; (3) Rest Period Violations; (4)

1 Unreimbursed Business Expenses; (5) Wage Statement Violations; (6) Waiting Time Penalties;
2 and (7) Unfair Competition (B&P §§ 17200, et seq.). On January 13, 2017, Plaintiff filed a First
3 Amended Complaint (FAC) adding a cause of action under the Private Attorneys General Act of
4 2004 (PAGA).

5 On February 6, 2018, following investigation and discovery, the Parties attended a full-
6 day mediation session before Hon. Dickran Tevrizian. The parties were unable to reach
7 agreement that day, but they continued to negotiation and ultimately agreed to terms of
8 settlement. A signed copy of the parties' Joint Stipulation of Class Action and PAGA Settlement
9 ("Settlement Agreement") was filed with the Court.

10 Prior to the initial hearing on this motion, the Court issued a checklist of items in need of
11 further briefing. In response, on August 22, 2018, Class Counsel filed supplemental briefing,
12 including a First Amended Settlement Agreement, attached to the Supplemental Declaration of
13 Edward J. Wynne as Exhibit 2. All citations to the Settlement Agreement below are to the
14 amended document filed on August 22, 2018.

15 Now before the Court is the parties' continued motion for preliminary approval of the
16 settlement agreement.

17 **II. DISCUSSION**

18 **A. SETTLEMENT CLASS DEFINITION**

19 The "Class" shall mean all Relationship Managers employed by Defendant in California
20 during the Settled Period. (Settlement Agreement, ¶I.c)

21 "Relationship Managers" includes and refers to the job positions of Relationship
22 Manager I, Relationship Manager II, Relationship Manager Team Lead, Real Estate Relationship
23 Manager, and Real Estate Senior Relationship Manager. (¶I.aa)

24 "Settlement Class Member" or "Settlement Class" refers to Class Members who do not
25 timely submit valid opt-out forms. (¶I. ff)

1 The Parties agree to stipulate to class action certification only for purposes of the
2 Settlement. (¶IV.a)

3 The “Settled Period” is the time period from November 9, 2012 through May 2, 2018.
4 (¶I.ii)

5 There are approximately 87 putative class members. (Declaration of Edward Wynne
6 ¶15.) Of these 87 putative class members, all of whom will be permitted to participate in the
7 class settlement, 60 have previously entered into individual settlements with Defendant.
8 (Supplemental Declaration of Edward Wynne ¶11.)

9 **B. TERMS OF SETTLEMENT AGREEMENT**

10 The essential terms are as follows:

- 11 • The Total Settlement Amount (“TSA”) is **\$500,000, non-reversionary.** (¶I.jj)
 - 12 ○ Defendant will pay **\$488,400** to the Settlement Administrator within 1 business
 - 13 day after the Final Approval Date. (¶IV.f) The remaining \$11,600 has already
 - 14 been paid by Defendant to certain Class Members in exchange for releases of
 - 15 claims. (¶I.w)
- 16 • The Net Settlement Amount (“NSA”) (**\$268,334**) is the TSA minus:
 - 17 ○ Up to **\$166,666** (33 and 1/3%) for attorney fees (¶IV.d);
 - 18 ○ Up to **\$25,000** for attorney costs (*Ibid.*);
 - 19 ○ Up to **\$20,000** for a service award to the class representative (¶IV.c);
 - 20 ○ Up to **\$12,500** for claims administration costs (¶III.c);
 - 21 ○ Payment of **\$7,500** (75% of \$10,000 PAGA penalty) to the LWDA (¶IV.b); and
 - 22 ○ Partial Release Pre-Payment of **\$11,600** that Defendant has already paid to certain
 - 23 Class Members in exchange for their releases of claims. (¶I.w)
 - 24 ■ Defendant recognizes that it would not have paid the Partial Release Pre-
 - 25 Payment to any member, of the Class but for the instant Action. As such,

1 Parties agree that the Partial Release Pre-Payment is a benefit to the Class
2 that was generated as a result of the Action and comprises a part of the
3 Total Settlement Amount. (*Ibid.*)

- 4 • There is no claims process. Class members will receive a settlement payment unless they
5 opt-out.
- 6 • The Response Deadline will be the date that is 45 calendar days after the initial mailing
7 of Notice Packets to Class Members and is the deadline for Class Members to submit
8 workweek disputes, opt-out forms, and/or objections. For Class Members who receive re-
9 mailed Notice Packets, the deadline will be extended to the date that is 15 calendar days
10 from the date of re-mailing, or the Response Deadline, whichever is later. (§I.dd)
 - 11 ○ If 10% or more of Class Members timely and validly opt-out, Defendant has the
12 option to terminate the Settlement. (§III.e.2)
- 13 • The Net Settlement Amount will be distributed as follows: Compensable workweeks will
14 be all workweeks in which Settlement Class Members worked during the Class Period.
15 The dollars per compensable workweek ("Workweek Value") will be calculated by
16 dividing the Net Settlement Amount by the total workweeks worked by the Settlement
17 Class Members during the Class Period. The Workweek Value will be multiplied by the
18 number of compensable workweeks worked by each Settlement Class Member to
19 determine the Individual Settlement Payments. The same formula will be used with
20 respect to all Settlement Class Members. (§IV.e)
- 21 • All Individual Settlement Payments will be allocated as follows: 34% as wages, 33% as
22 interest, and 33% as penalties. (§IV.g)
- 23 • The employer's share of payroll taxes shall be paid separately and in addition to the TSA.
24 (§I.j)

- 1 • "Stale Checks" or "Stale Payments" shall mean any checks or payments issued to
2 Settlement Class Members pursuant to this Settlement Agreement that are not cashed or
3 presented for payment within 180 days from the date of issuance. (§I.II)
 - 4 ○ Stale Checks shall be cancelled and funds associated with such checks shall be
5 considered unpaid, unclaimed, or abandoned cash residue pursuant to California
6 Code of Civil Procedure § 384 ("Unpaid Residue"). The Unpaid Residue plus any
7 accrued interest that has not otherwise been distributed, shall be transmitted to the
8 CASA Los Angeles, a charity which promotes child advocacy. (§IV.k)
- 9 • The settlement administrator is KCC, LLC. (§I.ee)
- 10 • Notice of final judgment will be posted on the settlement website. (§III.d.4)
- 11 • All class members who do not opt out will release certain claims against Defendant.
12 (See further discussion below)

13 **C. SETTLEMENT STANDARDS AND PROCEDURE**

14 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an
15 entire class action, or of a cause of action in a class action, or as to a party, requires the approval
16 of the court after hearing." "Any party to a settlement agreement may serve and file a written
17 notice of motion for preliminary approval of the settlement. The settlement agreement and
18 proposed notice to class members must be filed with the motion, and the proposed order must be
19 lodged with the motion." See CRC rule 3.769(c).

20 "In a class action lawsuit, the court undertakes the responsibility to assess fairness in
21 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
22 action. The purpose of the requirement [of court review] is the protection of those class
23 members, including the named plaintiffs, whose rights may not have been given due regard by
24 the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*
25 (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); *Wershba v. Apple Computer,*

1 *Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”): Court needs to “scrutinize the proposed
2 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is
3 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
4 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned,” internal
5 quotation marks omitted.)

6 “The burden is on the proponent of the settlement to show that it is fair and reasonable.
7 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-
8 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court
9 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
10 objectors is small.’” (*Wershba* at 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
11 1794, 1802 (“*Dunk*”).) Notwithstanding an initial presumption of fairness, “the court should not
12 give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
13 130 (“*Kullar*”). “Rather, to protect the interests of absent class members, the court must
14 independently and objectively analyze the evidence and circumstances before it in order to
15 determine whether the settlement is in the best interests of those whose claims will be
16 extinguished.” (*Ibid.*) In that determination, the court should consider factors such as “the
17 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
18 the risk of maintaining class action status through trial, the amount offered in settlement, the
19 extent of discovery completed and stage of the proceedings, the experience and views of
20 counsel, the presence of a governmental participant, and the reaction of the class members to the
21 proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not exclusive and the court is free to
22 engage in a balancing and weighing of factors depending on the circumstances of each case.”
23 (*Wershba* at 245.)

24 “A settlement need not obtain 100 percent of the damages sought in order to be fair and
25 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the

1 relief afforded by the proposed settlement is substantially narrower than it would be if the suits
2 were to be successfully litigated,' this is no bar to a class settlement because 'the public interest
3 may indeed be served by a voluntary settlement in which each side gives ground in the interest
4 of avoiding litigation.'" (*Id.* at 250.)

5 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

6 **1. Does a presumption of fairness exist?**

7 a. Was the settlement reached through arm's-length bargaining? Yes. On February
8 6, 2018, a full-day, mediation session was undertaken by mutual agreement of the
9 parties before Hon. Dickran Tevrizian in Los Angeles, California. No agreement
10 was reached that day, but the parties continued to negotiate, which ultimately
11 resulted in an agreement as to the material terms of the Settlement (Wynne Decl.,
12 ¶13.)

13 b. Were investigation and discovery sufficient to allow counsel and the court to act
14 intelligently? Yes. Class Counsel represents that he took the depositions of three
15 of Defendant's officers. Plaintiff also had his deposition taken. In response to
16 Plaintiff's document requests, Class Counsel represents that Defendant produced
17 over 9,500 pages of documents regarding, *inter alia*, Defendant's employment
18 policies and procedures, job duties and responsibilities, and documents and
19 correspondence relating to the allegations in the complaint. Plaintiff's counsel
20 represents that he also served special interrogatories on Defendant to which
21 Defendant responded. Plaintiff's counsel interviewed a number of Relationship
22 Managers in order to investigate the allegations of the complaint and to obtain
23 evidence bolstering Plaintiff's contentions. Plaintiff also produced nearly 250
24 pages of documents in response to Defendant's discovery requests and responded
25 to Defendant's special interrogatories and two sets of form interrogatories.

1 Furthermore, Class Counsel represents that Defendant also served subpoenas on
2 four of Plaintiff's current and former employers which generated another
3 approximately 300 documents. (*Id.* at ¶12.)

4 Prior to the mediation, Class Counsel represents that Defendant provided
5 class information to Plaintiff including wages and incentive information for each
6 class member, together with all dates of employment: In addition, Defendant also
7 disclosed that it had obtained releases from almost 70% of the class members and
8 provided information on the number of work weeks those releasing class
9 members represented. (*Id.* at ¶14.)

10 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced
11 in class action litigation, including wage and hour class actions. (*Id.* at ¶¶ 2-9.)

12 d. What percentage of the class has objected? This cannot be determined until the
13 fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before
14 Trial (The Rutter Group 2014) ¶ 14:139.18: "Should the court receive objections
15 to the proposed settlement, it will consider and either sustain or overrule them at
16 the fairness hearing.")

17 CONCLUSION: The settlement is entitled to a presumption of fairness.

18 **2. Is the settlement fair, adequate, and reasonable?**

19 a. Strength of Plaintiffs' case. "The most important factor is the strength of the case
20 for plaintiffs on the merits, balanced against the amount offered in settlement."
21 (*Kullar* at 130.)

22 Plaintiff alleges the following claims as set forth in Plaintiff's First
23 Amended Complaint: Labor Code § 510 (overtime compensation); Labor Code §
24 226.7 and 512 (meal and rest period violations); Labor Code § 2802
25 (unreimbursed. business expenses); Labor Code § 226 (unlawful wage

1 statements); Labor Code § 203 (waiting time penalties); and Labor Code § 2699
2 (PAGA). Plaintiff's primary claim is that Defendant misclassified the RMs as
3 exempt as opposed to nonexempt under California law. All of the other claims are
4 derivative of that determination with the exception of the Labor Code § 2802
5 claim.

6 While all Class Members worked a reported 11,737 total work weeks,
7 Defendant obtained releases for 60 out of the 87 Class Members, representing
8 8,621 workweeks. Only 3,116 workweeks were not released. Plaintiff recognizes
9 that these releases present substantial risk to recovery, and accordingly for
10 settlement purposes only, the workweeks that were released were assigned no
11 value. (Suppl. Decl. of Wynne ¶11.)

12 Class Counsel has provided information, summarized in the table below,
13 regarding Defendant's estimated maximum exposure on the class claims alleged.

Claim	Maximum Exposure
Unpaid Overtime	\$1,915,587.00
Meal/Rest Break Violations	\$441,420.00
Wage Statement Violations	\$84,000.00
Waiting Time Penalties	\$356,989.00
Unreimbursed Business Expenses	De minimus
PAGA	\$242,700.00
Total	\$3,040,696.00

22 (Supplemental Brief at 6:8-18; Supp. Wynne Decl. at Exhib. 7.)

23 In total, Class Counsel estimated Defendant's maximum exposure to be
24 approximately \$3,040,696. Class Counsel obtained a gross settlement valued at
25

1 \$500,000. This is 16.4% of Defendant's maximum potential exposure, which is
2 within the "ballpark of reasonableness."

- 3 b. Risk, expense, complexity and likely duration of further litigation. Given the
4 nature of the class claims, the case is likely to be expensive and lengthy to try.
5 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong
6 the litigation as well as any recovery by the class members.
- 7 c. Risk of maintaining class action status through trial. Even if a class is certified,
8 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*
9 (2010) 180 Cal.App.4th 1213, 1226: "Our Supreme Court has recognized that
10 trial courts should retain some flexibility in conducting class actions, which
11 means, under suitable circumstances, entertaining successive motions on
12 certification if the court subsequently discovers that the propriety of a class action
13 is not appropriate.")
- 14 d. Amount offered in settlement. As indicated above, the Total Settlement Amount
15 is \$500,000. (Settlement Agreement ¶I.ii.) Taking into account the \$11,600
16 already paid by Defendant, and assuming that the Court approves all of the
17 maximum requested deductions, approximately \$256,734 will be available for
18 distribution to Settlement Class Members. Assuming full participation, the
19 average settlement share will be approximately \$2,950.97. [$\$256,734 \text{ Net} \div 87$
20 $\text{class members} = \$2,950.97$]. This average payment is the amount to be paid *in*
21 *addition* to any amount the Class Member has already received as part of an
22 individual settlement with Defendant.
- 23 e. Extent of discovery completed and stage of the proceedings. As discussed above,
24 at the time of the settlement, Class Counsel had conducted extensive discovery.
25

1 f. Experience and views of counsel. The settlement was negotiated and endorsed
2 by Class Counsel who, as indicated above, is experienced in class action
3 litigation, including wage and hour cases. Counsel believes that the proposed
4 settlement is fair, reasonable, and adequate for each participating class member.
5 (Wynne Decl. ¶16.)

6 g. Presence of a governmental participant. This factor is not applicable here.

7 h. Reaction of the class members to the proposed settlement. The class members'
8 reactions will not be known until they receive notice and are afforded an
9 opportunity to opt out or object. This factor becomes relevant during the fairness
10 hearing.

11 CONCLUSION: The settlement can be preliminarily deemed “fair, adequate, and
12 reasonable.”

13 **3. Scope of release**

14 Release of Claims by Settlement Class: Upon the Effective Date, each Class Member,
15 except those who have validly excluded themselves by a timely and valid submission of an Opt-
16 Out Form, waive and forfeit, and shall have been deemed to have waived and forfeited, all
17 Released Claims against the Released Parties, and each of them. (¶IV.h)

- 18 • "Released Claims" means any and all claims for damages or any other remedies,
19 including, but not limited to, all claims for liquidated damages, restitution,
20 disgorgement, conversion, unjust enrichment, penalties, interest, and attorneys' fees and
21 costs, contingent or accrued, against the Released Parties, that could have been pled, or
22 were pled, based on the factual allegations in the Complaint, and any amendments
23 thereto including, but not limited to, claims for unpaid overtime, failure to pay minimum
24 wage, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof,
25 failure to indemnify for all work-related expenditures and losses, failure to pay wages

1 upon termination of employment in a timely manner, failure to provide accurate
2 itemized pay stubs, failure to keep requisite payroll records; failure to pay wages during
3 employment, violations of the Private Attorney General Act under California Labor
4 Code section 2698, et seq., violations of Labor Code Sections 201, 202, 203, 204,
5 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1198, and 2802, and violations
6 of Business and Professions Code Sections 17000 and 17200 et seq. for Unfair Business
7 Practices limited to the aforementioned Labor Code violations and the relevant Wage
8 Orders issued by the Industrial Welfare Commission, arising during the Settled Period.
9 (§I.bb)

- 10 • "Released Parties" shall mean Defendant and any of its former and present subsidiaries,
11 holding companies, parent companies and affiliated companies, and its or their
12 respective officers, directors, employees, partners (both current and former),
13 shareholders and agents (including, without limitation, any investment bankers,
14 accountants, insurers, reinsurers, attorneys and any past, present or future officers,
15 directors and employees), and any other successors, assigns, or legal representatives.

16 (§I.cc)

- 17 • The Class Representative will additionally provide a general release and §1542 waiver.
18 (§IV.i)

19 The releases appear to be proper, except with respect to the release under Labor Code
20 section 2802. The class release is otherwise appropriately tethered to the pleading and limited
21 to the relevant time period. Plaintiff's broader release is acceptable as he was represented by
22 counsel when these terms were negotiated.

23 **Class counsel shall be prepared to advise the Court as to why release of a Labor**
24 **Code section 2802 claim is proper when it was not pled.**

25 **4. May conditional class certification be granted?**

1 a. Standards

2 A detailed analysis of the elements required for class certification is not required, but it
3 is advisable to review each element when a class is being conditionally certified. (*Amchem*
4 *Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627.) The trial court can appropriately
5 utilize a different standard to determine the propriety of a settlement class as opposed to a
6 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
7 cases. (*Dunk* at 1807, FN 19.) Finally, the Court is under no “ironclad requirement” to conduct
8 an evidentiary hearing to consider whether the prerequisites for class certification have been
9 satisfied. (*Wershba* at 240.)

10 b. Analysis

- 11 i. Numerosity. The proposed Settlement Class consists of approximately
12 87 individuals, 60 of whom entered into individual settlements with
13 Defendant. (Wynne Decl., ¶15.) Thus, numerosity has been established.
14 (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934, stating that
15 “[n]o set number is required as a matter of law for the maintenance of a
16 class action” and citing examples wherein classes of as little as 10
17 [*Bowles v. Superior Court* (1955) 44 Cal.2d 574] and 28 [*Hebbard v.*
18 *Colgrove* (1972) 28 Cal.App.3d 1017] were upheld).
- 19 ii. Ascertainability. The class is defined above. The class definition is
20 “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.*
21 (2010) 189 Cal.App.4th 905, 919.) Class Members are readily
22 ascertainable from Defendant’s business records. (Settlement
23 Agreement, ¶III.d.1.)
- 24 iii. Community of interest. “The community of interest requirement involves
25 three factors: ‘(1) predominant common questions of law or fact; (2) class

1 representatives with claims or defenses typical of the class; and (3) class
2 representatives who can adequately represent the class.” (*Linder v.*
3 *Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

4 Here, Class Counsel asserts that Defendant's class-wide policy
5 that all Relationship Managers are to be primarily engaged in the same
6 types of activities is a uniform policy warranting a finding of
7 predominance. Plaintiff's theory of recovery is that Relationship Manager
8 ("RM") position, was designed, managed and monitored as a sales job
9 and, as a consequence, that is how the RMs uniformly spent their time -
10 primarily engaged in sales and sales-related activities. Defendant alleges
11 that its RMs are exempt under the administrative exemption. (Supp. Brief
12 at 3:22-4:3.)

13 Regarding typicality, Class Counsel asserts that Plaintiff Hesami
14 is typical because he worked as a Relationship Manager for Defendant in
15 California during the class period, worked overtime, and alleges that he
16 spent the majority of his time engaged in sales and sales related activities.
17 (Motion at 5:9-11.)

18 Finally, Class Counsel asserts that Plaintiff Hesami is an adequate
19 representative for the class because he does not have any interests that are
20 antagonistic to those of the class and has demonstrated his commitment to
21 the class through his active participation in the case. (*Id.* at 5:16-17.)

22 iv. Adequacy of class counsel. As indicated above, Class Counsel has
23 shown experience in class action litigation.
24
25

1 v. Superiority. Given the relatively small size of the individual claims, a
2 class action appears to be superior to separate actions by the class
3 members.

4 CONCLUSION: The class may be conditionally certified since the prerequisites of class
5 certification have been satisfied.

6 **5. Is the notice proper?**

7 a. Method of class notice.

8 Within 14 calendar days following the Preliminary Approval Order Date, Defendant will
9 provide the Settlement Administrator with the Class List and Data. (§III.d.1) Within 14 calendar
10 days of receipt of the Class List and Data, the Administrator shall mail the Notice Packet to the
11 Class Members via first-class regular U.S. mail. Prior to mailing, the Settlement Administrator
12 will perform a search based on the National Change of Address Database information to update
13 and correct for any known or identifiable address changes. (§III.d.2.)

14 If a new address is obtained by a way of a returned Notice Packet, then the Settlement
15 Administrator shall, within 5 calendar days, forward the original Notice Packet to the updated
16 address via first-class regular U.S. Mail indicating on the original Notice Packet the date of such
17 re-mailing. Where a Notice Packet is returned as undeliverable, without a forwarding address,
18 the Settlement Administrator will perform a computer/SSN and "skiptrace" search to obtain an
19 updated address. The Parties agree to cooperate with the Settlement Administrator to locate a
20 more recent address for Class Members, where necessary, continuing throughout the Response
21 Period. The address identified by the Settlement Administrator as the current mailing address
22 shall be presumed to be the best mailing address for each Settlement Class Member. (§III.d.3)

23 b. Content of class notice.

24 A copy of the revised proposed class notice is attached to the Supplemental Declaration
25 of Edward Wynne as Exhibit 4. The notice appears to be acceptable. It includes information

1 such as: a summary of the litigation; the nature of the settlement; the terms of the settlement
2 agreement; the maximum deductions to be made from the gross settlement amount (i.e., attorney
3 fees and costs, the enhancement award, and claims administration costs); the procedures and
4 deadlines for participating in (do nothing), opting out of, or objecting to, the settlement; the
5 consequences of participating in, opting out of, or objecting to, the settlement; and the date,
6 time, and place of the final approval hearing.

7 c. Cost of Class Notice

8 As indicated above, settlement administration costs are estimated to be no more than
9 **\$12,500.** (Settlement Agreement ¶III.c.) Prior to the time of the final fairness hearing, the
10 settlement administrator must submit a declaration attesting to the total costs incurred and
11 anticipated to be incurred to finalize the settlement for approval by the Court.

12 CONCLUSION: Based on the above, the Court finds that the notice plan is adequate and
13 conforms to due process requirements.

14 **6. Attorney fees and costs**

15 CRC rule 3.769(b) states: “Any agreement, express or implied, that has been entered into
16 with respect to the payment of attorney fees or the submission of an application for the approval
17 of attorney fees must be set forth in full in any application for approval of the dismissal or
18 settlement of an action that has been certified as a class action.”

19 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using
20 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22
21 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615,
22 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the
23 court may use the percentage method, as cross-checked against the lodestar. (*Laffitte v. Robert*
24 *Half International, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the
25 contrary, “the court ha[s] an independent right and responsibility to review the attorney fee

1 provision of the settlement agreement and award only so much as it determined reasonable.”
2 (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

3 The question of class counsel’s entitlement to **\$166,666** in attorney fees will be
4 addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.
5 Class counsel must provide the court with billing information so that it can properly apply the
6 lodestar method, and must indicate what multiplier (if applicable) is being sought.

7 Class counsel should also be prepared to justify the costs sought (capped at **\$25,000**) by
8 detailing how they were incurred.

9 **7. Enhancement Award to Class Representative**

10 The Settlement Agreement provides for an enhancement award of up to **\$20,000** for the
11 class representative, Saeed Hesami. (¶IV.c.) In connection with the final fairness hearing, the
12 named Plaintiff must submit a declaration attesting to why he should be entitled to an
13 enhancement award in the proposed amount. The named Plaintiff must explain why he “should
14 be compensated for the expense or risk he has incurred in conferring a benefit on other members
15 of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.)
16 Trial courts should not sanction enhancement awards of thousands of dollars with “nothing
17 more than *pro forma* claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential
18 risk.’ Significantly more specificity, in the form of quantification of time and effort expended on
19 the litigation, and in the form of reasoned explanation of financial or other risks incurred by the
20 named plaintiffs, is required in order for the trial court to conclude that an enhancement was
21 ‘necessary to induce [the named plaintiff] to participate in the suit’” (Id. at 806-807, italics
22 and ellipsis in original.)

23 The Court will decide the issue of the enhancement award at the time of final approval.

24 //

25 //

1 **III. CONCLUSION AND ORDER**

2 Contingent upon counsel explaining why the Labor Code section 2802 claim is properly
3 released, the Court hereby:

- 4 (1) Grants preliminary approval of the settlement as fair, adequate, and reasonable;
- 5 (2) Grants conditional class certification;
- 6 (3) Appoints Saeed Hesami as Class Representative;
- 7 (4) Appoints the Wynne Law Firm as Class Counsel;
- 8 (5) Appoints KCC, LLC as Settlement Administrator;
- 9 (6) Approves the proposed notice plan; and
- 10 (7) Approves the proposed schedule of settlement proceedings, as follows:

- 11 • Preliminary approval hearing: September ¹²~~14~~, 2018
- 12 • Deadline for Defendant to provide class list to settlement administrator: September ²⁶~~25~~,
13 2018 (within 14 calendar days from preliminary approval)
- 14 • Deadline for settlement administrator to mail notices: October ¹⁰~~9~~, 2018 (within 14
15 calendar days from receipt of class list)
- 16 • Deadline for class members to opt out: November ²⁶~~23~~, 2018 (45 days after mailing of
17 notices)
- 18 • Deadline for class members to object: November ²⁶~~23~~, 2018 (45 days after mailing of
19 notices)
- 20 • Deadline for class counsel to file motion for final approval: 12/28³¹/18,
21 2018 (16 court days prior to final fairness hearing)
- 22 • Final fairness hearing: 1/24, 2019, at 9:00 a.m.

23 Dated: 9/12/18

Maren E. Nelson

24 MAREN E. NELSON

25 Judge of the Superior Court