IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RICHARD MARCH, *et al*., individually and on behalf of all others similarly situated, Plaintiffs, v. BANK OF AMERICA, N.A., Defendant.	Case No. 2:23-cv-02360-EFM-TJJ

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT UNDER RULE 23(e)

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INTRODUCTION

Plaintiffs were employees of Bank of America who, in the early months of 2020 during the COVID-19 pandemic, were redeployed from their regular jobs to assist with processing loans to hundreds of thousands of the nation's small businesses through the federal government's Paycheck Protection Program (PPP). Many of these employees were hourly nonexempt workers who were persuaded to help with administering the PPP with promises of incentive payments that Plaintiffs allege went unfulfilled. Others were classified as exempt and were thus not paid any premium for their overtime work, even though their new PPP-related duties consisted primarily of loan processing work that Plaintiffs claim did not qualify for an overtime exemption. Plaintiffs brought three cases around the country to recover allegedly unpaid wages (and related penalties) they believe are due, invoking various overtime, wage payment, and related statutes, as well as their common law contract rights. The cases are now consolidated before this Court for settlement purposes. The Bank has consistently argued that they compensated employees in full compliance with all applicable laws, and the Court has not issued any merits findings in favor of either party.

After litigating three cases, fully briefing two class certification motions, and three separate mediations, Plaintiffs and the Bank have reached a $17,500,000 non-reversionary class action settlement. The common fund will pay eligible class members, the cost of settlement administration, payroll taxes, a service award of up to $10,000 for each named Plaintiff, and Plaintiffs' counsel's attorneys' fees (not to exceed one-third of the fund) plus litigation expenses. The net fund will make meaningful payments to class members with no claims process. The average per capita settlement payment is estimated to be more than $1,400 net of all fees and costs. However, because the allocation formula will distribute settlement proceeds pro rata based on time worked on the PPP, the jurisdiction in which the time was worked, amounts of incentives earned,

and rates of pay, some class members will be entitled to considerably more than the average. Plaintiffs believe this is meaningful relief to the class, and reasonably approximates what, if the litigation continued, may have been awarded after a lengthy and uncertain process culminating in a jury trial.

Importantly, there is no claims process. Class members who do not request to be excluded will automatically receive a check in the mail for their share of the settlement fund. In no event will any settlement funds revert to the Bank. In exchange for these payments, class members agree to an appropriately narrow release of claims tailored to the facts asserted in the operative complaints. Plaintiffs have obtained a $17,500,000 settlement covering 7,701 workers for a discrete period in 2020. It is a strong result achieved only after thorough discovery in cases across the country.

Under Rule 23(e)(1), an order directing notice to the class is justified where the Court concludes it will likely be able to (1) approve the settlement as fair, reasonable, and adequate, and (2) certify the classes for purposes of settlement. Accordingly, Plaintiffs request that the Court permit the issuance of notice to the class of the proposed settlement, approve the form and manner of notice to the class, appoint Plaintiffs' counsel as class counsel, appoint Plaintiffs as class representatives, and schedule a final approval hearing to determine whether the settlement should be finally approved. The Settlement Agreement (including all attachments) is attached as **Exhibit 1**.

As the proposed Settlement Agreement is fair, reasonable and adequate and meets the requirements of Rule 23(e)(1)(B), Plaintiffs respectfully request that this Court determine that it is likely to approve the Settlement and certify the Settlement Class for purposes of entering judgment

on the Settlement, and direct that notice of the Settlement be issued. Plaintiffs thus request the Court enter the parties' proposed order attached as **Exhibit 3**.

BACKGROUND AND LITIGATION HISTORY

I. Bank of America's PPP Loan Program

In response to the COVID-19 outbreak, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which allocated significant funding for loans to small businesses affected by the pandemic and resulting economic downturn. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat 281 (2020). This loan measure—dubbed the Paycheck Protection Program (PPP)—was to be administered by the federal Small Business Administration in conjunction with the Department of the Treasury. *Id.* But rather than administer this program on its own, the federal government turned to large financial institutions like Bank of America, which had the existing infrastructure to process large numbers of loans. 15 U.S.C. § 636(a)(36)(F)(ii).

Although this point was heavily disputed in the litigation, Plaintiffs contended that, for companies like Bank of America, the task of processing and disbursing loans through the PPP program promised to be a highly profitable one. Financial institutions were paid a percentage commission on each loan they administered on a sliding scale between 1-5% depending on the amount of the loan. *See* 15 U.S.C. § 636(a)(36)(P)(i)(I). But Plaintiffs contend that the loan officers and other employees did not share the Bank's financial upside for processing these loans. Prior to the pandemic, most of these workers were paid on an hourly basis and made much of their income through commissions on loans they originated and processed. But PPP loan work did not generate commissions and took the workers' time away from their commissioned work.

The majority of the workforce redeployed to work on the PPP loan program were classified as nonexempt for purposes of the Fair Labor Standards Act (FLSA) and state-law analogs and

were thus eligible to earn overtime. To induce these workers to remain with the Bank and attend to the large number of PPP applications, Bank leadership promised various incentive payments to the employees it assigned to work on the PPP loan program. These incentives took several forms, but the most pertinent of them promised eligible employees that they would be paid (1) three times their base hourly rate for work performed on weekends; and (2) double their base hourly rate for work over eight hours on a weekday. According to Plaintiffs, the Bank should have paid employees these incentives in full as they were earned. Then, if the employee also worked overtime for that period, it should have paid those overtime hours at the overtime premium rate, with the incentive payments included in the regular rate calculation. *See* **Exhibit 2**, Hanson Decl. at ¶¶ 5-9.

But that is not what happened. Instead, the Bank treated the PPP incentives as an overtime enhancement, rather than a separate payment obligation. As a result, it offset and credited its contractual obligations and statutory overtime obligations against each other. Although the Bank vigorously argued throughout the litigation and maintains to this day that its method of paying PPP incentives was entirely proper, Plaintiffs allege that the Bank's process failed to pay the promised incentives in full and left employees short-changed what they were owed. *Id.* at ¶ 9.

In addition, a smaller number of employees classified as exempt and not paid overtime were assigned to work on the PPP loan program, which Plaintiffs maintain consisted primarily of non-exempt, clerical work relating to the processing of loan applications. According to Plaintiffs, those employees were misclassified for the duration of their work on the PPP loan program and as a result were not paid any overtime pay despite being required to work long and difficult hours to meet the demands of the Bank's many small business clients. *Id.* at ¶ 10.

The Bank's PPP loan program went into effect on April 1, 2020, shortly after the start of the COVID-19 pandemic, and days after the passage of the CARES Act. It remained in operation

through May 2021. But the bulk of its work—and the vast majority of its impact on the affected workers—occurred over approximately four months between April and August 2020. The litigation concerning these pay practices focused on a compressed and unique period of time amounting to four months of the height of the COVID-19 pandemic. *Id.* at ¶¶ 11-12.

II. Plaintiffs' Counsel's Investigation

For several years, the legal consequences of the Bank's payment of PPP loan incentives remained dormant. But in late June 2023, Plaintiffs' counsel was contacted by former employees of the Bank who had worked on the PPP loan program. They explained that workers assigned to work on PPP loans were promised incentive payments that they did not believe were being paid correctly, albeit for reasons that were not entirely clear. *Id.* Plaintiffs' counsel then embarked on a thorough investigation that involved communication with approximately one hundred current and former employees of the Bank who through testimonials and compensation documents corroborated their belief that they were underpaid for work performed on the PPP loan program. *Id.* at ¶¶ 13-15.

This investigation confirmed to Plaintiffs' counsel that they were onto something—that many, perhaps thousands, of Bank employees suffered significant monetary losses during the early chaotic months of the COVID-19 pandemic. Plaintiffs' counsel then moved quickly to gather documents, formulate legal theories of recovery, and identify affected employees who would be willing to represent a potential class in a lawsuit. As a result of these substantial efforts, Plaintiffs' counsel was able to draft and file thorough pleadings to preserve the interests of affected employees just over one month after receiving the initial case intake. *Id*. at ¶¶ 16-17.

From the beginning, it was clear that one of the main roadblocks to a successful outcome for the putative class would be the timeliness of the claims. Specifically, in investigating the case, Plaintiffs' counsel learned that much of the work on the PPP loan program had tapered off by end

of the summer of 2020. In other words, around three years after counsel first learned of the potential case. This was a serious potential problem as the limitations period for claims under the FLSA is three years absent agreed or equitable tolling. *See* 29 U.S.C. § 255. Time was of the essence, and Plaintiffs' counsel took steps to preserve the putative class's claims.

First, having found that New York and California—two states that had limitations periods for unpaid wages claims that extended longer than three years[1]—appeared to have been hotbeds of PPP loan processing work for the Bank, they would file suit separately in those jurisdictions to fully preserve those state law claims. *See* Hanson Decl. at ¶ 18. Second, Plaintiff's counsel's research resulted in a viable path for putative class members outside of California and New York, which rested on a handful of unique features of Kansas law that would turn out to be significantly contested aspect of the litigation.

The first of these was the state's COVID-19 tolling order, which tolled all statutes of limitations from March 19, 2020, to April 15, 2021. *See* Kansas Supreme Court Administrative Order 2021-PR-020; K.S.A. § 20-172. That tolling period applied to state law claims adjudicated in federal court *See Tran v. Cnty. of Douglas*, No. 2021 WL 5505455, at *5 (D. Kan. Nov. 24, 2021). Plaintiffs thus filed a multistate class action under Rule 23, invoking the overtime, wage payment, and contract laws of all states other than New York and California. Then, relying on Kansas Supreme Court authority, they sought to have Kansas' limitations period—including the tolling order making the period in which the PPP loan program was in effect timely—applied to the entire class, including those employees whose claims were governing by the substantive law

[1] The statute of limitations for unpaid wages under New York law is six years. N.Y. Lab. Law § 198(3). And though the California Labor Code has a three-year limitations period, claims for wages are recoverable under the state's Unfair Competition Law, which has a four-year lookback period. *See* Cal. Bus. & Prof. Code § 17208.

of other states. *See Wortman v. Sun Oil Co.* 241 Kan. 226, 232, 755 P.2d 488, 493 (1987) (applying Kansas' statute of limitations to all members of a multistate class, including those whose claims arose in other states). Moreover, to the extent that the Court's jurisdiction to consider the claims of out-of-state class members would be at issue, Kansas law recognizes that companies like the Bank that register to do business in the state consent to all-purpose jurisdiction in its courts, *see Merriman v. Crompton Corp*., 282 Kan. 433, 445 (2006)—a theory of personal jurisdiction that had just recently been upheld by the Supreme Court. *See Mallory v. Norfolk S. Ry. Co*., 600 U.S. 122 (2023). The filing of the Rule 23 claims before this Court automatically stopped the clock on the running of the limitations period as to absent class members. *See Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554 (1974).

Although the Bank did not agree with Plaintiffs' limitations period arguments, that disagreement—and the thoroughly adversarial approach to it at class certification—underscores why this settlement is fair, reasonable, and adequate under Rule 23(e).

III. Litigation History

Counsel thus moved forward with filing the actions, having identified numerous Bank employees willing and able to represent the class. Plaintiffs Diane Coluzzi, Michael Marchelos, and Gary Lieb filed their Complaint against the Bank on August 4, 2023, in the Southern District of New York. They asserted claims on behalf of all New York employees who worked on the Bank's PPP loan program under the FLSA, the New York Labor Law and the New York Wage Theft Prevention Act. *See Coluzzi v. Bank of America, N.A*., No. 1:24-cv-6042-LGS (S.D.N.Y.) Plaintiffs Giovanna Bolanos, Jean Lu, and Claude Grant filed their suit on August 9, 2023, in the Northern District of California, on behalf of all California-based employees working on the program, asserting claims under the FLSA and various provisions of the California Labor Code. *Bolanos v. Bank of America, N.A*., No. 3:23-cv-04027-JCS (N.D. Cal.). Finally, on August 18,

2023, Plaintiffs Richard March and Belinda Hollins filed their suit in this Court on behalf of PPP employees working in the remaining 48 states and the District of Columbia, asserting claims under the FLSA and the overtime laws of twenty-nine states. *See* Hanson Decl. at ¶ 18.

Initially, Plaintiffs believed that nonexempt employees had been underpaid due to their PPP incentive payments not being included in their "regular rates" when the Bank calculated and paid their overtime, leaving them with less overtime pay than what they were entitled to under the law. This was the key contention on which their initial filings were premised. But the Bank's counsel shared certain paystubs, seeming to show that while the incentives were not included in the employees' regular paycheck for a given pay period, they were included and paid in a supplemental check, paid at a later date. In other words, though the payments were made in arrears, it appears the PPP incentives *were*—to the extent the Bank did not offset them against statutory overtime—included in the employees' regular rates. *Id.* at ¶ 19.

But counsel had communicated with numerous nonexempt employees who had worked on the PPP loan program, all of whom were adamant that they had been underpaid in some manner. That between what they were promised and what they were actually paid, something simply did not add up. But due to the nature of the paystubs, owing to both their formatting and the timing of the payments, counsel found it was nearly impossible for anyone to tell exactly *why*. Counsel thus redoubled their efforts to find the source of the problem. Between the paystubs and emails provided by clients and other current and former Bank employees, counsel eventually discovered that the incentive payments promised to PPP employees were being credited toward the Bank's obligation to pay statutory overtime, thereby resulting in double-counting when, according to Plaintiffs, the law demanded that separate payments be made in full. *Id.* at ¶ 20.

Plaintiffs thus amended their complaints to allege as much. Between the three separately filed cases, Plaintiffs moved forward with claims for failure to pay incentive payments promised to them on behalf of all PPP employees in the United States on a breach of contract theory, and a corresponding violation of the wage payment and/or overtime statutes of 48 jurisdictions. *Id*. at ¶ 21.

The Bank filed an answer in each of the cases, and the parties proceeded to discovery. From the outset, the parties engaged in a robust exchange of information on an informal basis. And early on, they agreed to coordinate formal discovery across the three actions, such that any discovery taken in one case would be equally applicable to the other two. *Id*. at ¶¶ 22-23. Most formal discovery was conducted in the *March* action pending in this Court, which entered a bifurcated scheduling order calling for a first phase of discovery directed toward class certification issues, and a second phase directed toward merits issues after class certification had been ruled upon. *See* Dkt. 24. The deadline for the completion of Phase I discovery was December 10, 2024, with Plaintiffs' motion for class certification due one month later. *Id*. at *2.

Plaintiffs served their initial written discovery, consisting of interrogatories, requests for production, and requests for admissions, on June 24, 2024. The Bank provided its initial responses on August 23, 2024, and supplemented its production of documents on several occasions thereafter. The Bank produced hundreds of individual documents amounting to thousands of pages, along with numerous voluminous Excel spreadsheets. The Bank also produced class-wide payroll and timekeeping data, for which Plaintiffs retained an expert statistician to analyze. Plaintiffs took the depositions of five separate corporate representatives designated by the Bank over the course of the following months. Those deponents—Toby Clifton, Andreas Laporta, Patricia Johnson, Mary Ciruzzo, and Elise Thompson—each testified on various aspects of the

Bank's PPP loan program, including the process used to redeploy employees to the program, the tasks and duties performed by workers assigned to the program, and the methodologies used to calculate the PPP incentive payments made to nonexempt workers. Plaintiffs relied extensively on these materials and testimony in formulating their motion for class certification. Hanson Decl. at ¶ 24-26.

In the meantime, Plaintiffs also responded to discovery from the Bank. The Bank served interrogatories and requests for production to each of the named Plaintiffs, to which Plaintiffs timely responded. The Bank also took the depositions of Plaintiffs March, Hollins, Lu, Coluzzi, Marchelos, and Lieb. Following the close of Phase I discovery, Plaintiffs moved for class certification in the *March* action before this Court on January 10, 2025. *See* Dkt. 33-36. The Bank filed its opposition, and Plaintiffs subsequently replied on March 3, 2025. *See* Dkt. 43; 47. The parties also fully briefed Plaintiffs' motion for class certification in the *Bolanos* action pending in the Northern District of California, with Plaintiffs having filed their reply brief on March 26, 2025. Hanson Decl. at ¶¶ 27-28.

IV. The Parties' Settlement Negotiations

All the while, the parties worked earnestly toward a negotiated settlement of the case and did so across three separate sessions at different stages of the case. Ultimately, one week after class certification was fully briefed in this case, the parties mediated until nearly midnight with experienced wage-and-hour mediator Michael E. Dickstein at O'Melveny & Myers, LLP's New York City office. That was the third such mediation in the case, with the parties previously having held full-day sessions with mediator Jeffrey Fuchsman in Los Angeles on June 10, 2024, and with Hon. Jay C. Gandhi in New York on February 1, 2024. This lengthy and evolving conciliatory process allowed the parties to fully and candidly test the strengths and weaknesses of their respective positions. At the last of these mediations, the parties were able to reach an understanding

as to the overall scope and structure of the settlement. But the total amount to be paid by the Bank remained disputed, and so no agreement was reached. Nonetheless, Mr. Dickstein continued to facilitate discussion between the parties over the following weeks and months, which culminated in him making a double-blind mediator's proposal to the parties on May 13, 2025. That proposal called for the settlement of all claims at issue in the three coordinated cases for $17.5 million. On May 16, 2025, Mr. Dickstein announced that both parties had accepted his proposal. *Id*. at ¶¶ 29-32.

The parties then notified the Court that they had reached a settlement in principle, *see* Dkt. 48, and set to work preparing the detailed Settlement Agreement which is now before the Court for preliminary approval under Rule 23(e). *See* **Exhibit 1**, Settlement Agreement. The parties also agreed to consolidate the three coordinated cases before this Court for the purposes of approval of the settlement and facilitating notice to the class. Hanson Decl. at ¶ 33. Plaintiffs have thus filed a Second Amended Complaint, which includes all parties and claims subject to the parties' Settlement Agreement. *See* Dkt. 54.

SUMMARY OF THE SETTLEMENT TERMS

I. The Scope of the Settlement Class

The Settlement Class is defined as:

> All individuals currently or formerly employed by Bank of America during the Covered Period who: (1) were classified as non-exempt and earned PPP incentive payments pursuant to "Program 4", who have been identified as the 6,241 individuals identified on the "Program 4 NonEx Only" tab of the spreadsheet produced as Bates BOA PPP 00005652 (later reproduced as BOA-0002756); or (2) were classified as exempt and were redeployed to perform work that is allegedly non-exempt on the PPP, who have been identified as the 1,460 identified on the spreadsheet produced as Bates BOA-0002710 (later reproduced as BOA-0002757); or (3) any Named Plaintiff and Opt-In Plaintiff, including those not captured by (1) and (2) above.

Excluded from the Classes are Bank of America, any entity in which Bank of America has a controlling interest, any of the officers or directors of Bank of America, the legal representatives, heirs, successors, and assigns of Bank of America, anyone employed with Plaintiffs' counsel's firms, and any Judge to whom this case is assigned, and his or her immediate family. Hanson Decl. at ¶ 36; *see also* Settlement Agreement, § 1.

The Bank's records show that there are 7,701 total class members, with 1,460 being classified as exempt and 6,241 classified as nonexempt. Hanson Decl. at ¶ 37.

II. Benefits of the Settlement

The settlement creates a $17,500,000.00 common fund to pay class members, payroll taxes, the cost of settlement administration, a service award to each of the named Plaintiffs, and Plaintiffs' counsel's fees and litigation expenses. Ex. 1, Settlement Agreement, § III(D). Based on counsel's calculations, the net fund (less the costs and expenses listed above) will result in an average *per capita* payment to class members of approximately $1,440.00. Hanson Decl. at ¶ 39. That amount will be adjusted based on the allocation formula described more fully herein, which distributes settlement amounts pro rata based on time worked on the PPP and total incentives earned as well as rates of pay. Upward adjustments will also be provided to employees who worked in California or New York (whose law provides for recovery of additional penalties against employers). In other words, class members who would have had the highest damages at trial will receive the highest settlement allocation. The minimum payment to any class member, regardless of damages, is $100.00. To participate in the settlement, class members do not need to do anything—there is no claims process. Class members who *do not* request to be excluded from the settlement will receive a check in the mail for their settlement allocation. No uncashed checks will revert to the Bank; rather, after 120 days from the mailing of the settlement checks, the balance of any uncashed

checks will be transferred to the unclaimed property fund for the state in which the class member worked to be held for that class member. *Id*. at ¶¶ 39-43.

III. Notice and Settlement Administration

Notice and administration of the settlement will be carried out by Analytics Consulting, LLC, a nationally recognized class action notice and administration firm that has experience administering class action settlements. Under the terms of the settlement, the Bank will provide the settlement class list to Analytics within 15 business days after the entry of the preliminary approval order. Before mailing the notice, Analytics will update the mailing address information for each class member via the USPS National Change of Adress ("NCOA") database, which provides updated address information for individuals who have moved during the previous four years and filed a change of address with the USPS. Additionally, all addresses will be processed through the USPS Coding Accuracy Support System ("CASS") and Locatable Address Conversion System ("LACS") to ensure deliverability. Hanson Decl. at ¶ 51.

Thereafter, Analytics will disseminate notice to the members of the settlement class via U.S. mail to all settlement class members. Any returned notices by USPS with a forwarding address will be re-mailed to the new address provided by USPS. If notices are returned by USPS without forwarding addresses, Analytics will verify the settlement class member's address through public records (i.e., "skip tracing")—using a variety of data sources, including public records, real estate records, electronic deliver assistance listings, and other sources. When new postal addresses are located, the settlement class member database will be updated and the notice remailed. *Id*. at ¶ 52.

Analytics will also establish a settlement website in the form agreed to by the parties and the Court. In addition to Notice, the website will include information about the settlement, related case documents, and the Settlement Agreement. *Id.* Likewise, Analytics will establish a contact

center that is accessible 24 hours a day, 7 days a week, through a toll-free telephone number identified in the notice. *Id*. at ¶ 53.

The approximate cost of notice and administrator is $75,000, which will be paid from the Settlement Fund. *Id*. at ¶ 54.

The proposed class notice meets the standards of Rule 23(c)(2)(B). *See* Class Notice, Ex. B to Settlement Agreement. The notice uses plain English in an easy-to-read format that concisely explains to class members the nature of the case and their options under the settlement. It includes information such as the case caption, a description of the settlement class, a description of the claims and the history of the litigation, a description of the settlement and the claims being released, the names of Plaintiffs' counsel, a statement of the maximum amount of attorneys' fees that will be sought by Plaintiffs' counsel, the maximum amount Plaintiffs' counsel will seek for service awards at the final approval hearing, a description of the procedures and deadlines for requesting exclusion and objecting to the Settlement, the URL to access the settlement website containing relevant case documents, and the manner in which to obtain further information. *Id.*

IV. Service Awards, Attorneys' Fees and Expenses

The Settlement Agreement provides for up to a $10,000 service award for each of the named Plaintiffs to be paid from the settlement fund subject to the Court's approval. In addition, and also subject to approval by the Court, the settlement fund will be used to pay Plaintiffs' counsel's attorneys' fees and expenses. Prior to the deadline for class members to object or opt out of the settlement, Plaintiffs' counsel will file a motion for attorneys' fees not to exceed one-third (33.33%) of the common fund plus reasonable expenses (currently estimated to be approximately $250,000, which will be posted on the settlement website. *Id*. The settlement is not contingent on the Court awarding any specific amount to Plaintiffs' counsel as attorneys' fees and any amounts

not awarded will be distributed to *pro rata* to class members under the method of allocation. Hanson Decl. at ¶¶ 48-50.

V. Allocation of Payments to Class Members

The Plan of Allocation is attached as Exhibit B to the Settlement Agreement. As noted above, all class members will receive a minimum payment of at least $100.00, regardless of the amount of time they spent working on the PPP loan program. All remaining money will be divided between two separate funds available to nonexempt and exempt employees respectively. 74.6% of the net funds will be allocated to the payment of the claims of the 6,241 nonexempt employees, with the remaining 25.4% going to the 1,460 exempt employees. This allocation between the two groups of workers tracks the approximate distribution of claimed damages between them. Exempt employees will receive a higher *per capita* disbursement because Plaintiffs' counsel found that they, on balance, suffered a higher amount of unpaid wages than nonexempt employees. The variables used to calculate settlement amounts pro rata are the time worked on PPP and incentives earned, as well as rates of pay. Class members will also receive a multiplier of 1.75 if they worked in California or 1.4 if they worked in New York, due to additional penalties and enhancements those states impose against employers liable for failure to pay wages due. The allocation formula tracks the damages model developed by Plaintiffs' counsel and consulting experts during the litigation and for purposes of mediation; thus, class members with stronger claims will receive a proportionally higher settlement allocation. *Id.* at ¶¶ 40-44.

VI. Release of Claims

In exchange for the benefits under the Settlement, all Class Members who do not exclude themselves will release all state law claims against the Bank that were or could have been asserted based on the facts alleged in the operative complaints. Class members who cash their settlement check will also release the FLSA claims plead in the operative complaints. This is an appropriately

narrow release that ensures that no wage claim unrelated to the Bank's PPP loan program will be inadvertently waived or compromised. *Id.* at ¶ 39.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND IT SHOULD BE GRANTED PRELIMINARY APPROVAL

Settlement is strongly favored as a method of resolving disputes. This is particularly true in class actions such as the present action. *Sears v. Atchison, Topeka & Santa Fe Ry. Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984). Under Rule 23(e), review of a proposed class action settlement is a two-step process. *In re Motor Fuel Temperature Sales Pracs. Litig.,* 258 F.R.D. 671, 675 (D. Kan. 2009). At preliminary approval, the Court analyzes whether there is any reason not to proceed with the proposed settlement and notify the class. After the Court preliminarily approves the settlement, the class is notified and provided an opportunity to be heard at the final approval hearing. At the final approval hearing, the Court considers the merits of the settlement to decide if it should be finally approved. *Id.* As Judge Lungstrum recently reaffirmed in *Anderson v. Coca-Cola Bottlers' Ass'n*, courts apply the following standard of review at the preliminary approval stage:

> Because preliminary approval is just the first step of the approval process, courts apply a less stringent standard than that at final approval. District courts have developed a jurisprudence whereby they undertake *some* review of the settlement at preliminary approval, but perhaps just enough to ensure that sending notice to the class is not a complete waste of time. The general rule is that a court will grant preliminary approval where the proposed settlement is neither illegal nor collusive and is within the range of possible approval. While the Court will consider the Tenth Circuit's factors in depth at the final approval hearing, they are a useful guide at the preliminary approval stage as well.

2023 WL 3159471, at *2 (D. Kan. Apr. 28, 2023) (collecting authorities) (italics in original).

Plaintiffs now request the Court to take the first step in this two-step process. "The Court will ordinarily grant preliminary approval where the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the

range of possible approval.'" *Motor Fuel*, 258 F.R.D. at 675 (quoting *Am. Med. Ass'n v. United Healthcare Corp.*, 2009 WL 1437819, at *3 (S.D.N.Y. May 19, 2009)). "Although the Court must assess the strength of plaintiffs' claims, it should not decide the merits of the case or resolve unsettled legal questions." *Id.* (quoting *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 (1981)).

Rule 23(e)(2), as amended in 2018, dictates that at the final approval stage, courts should consider whether: (1) "the class representatives and class counsel have adequately represented the class"; (2) "the proposed settlement was negotiated at arm's length"; (3) "the proposed settlement treats class members equitably relative to each other"; and (4) "the relief provided for the class is adequate taking into account (i) the costs, risks, and delay of trial and appeal[,] (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims[,] and (iii) the terms of any proposed award of attorney's fees, including timing of payment." *Id.* Plaintiffs address each of these factors in turn below.

I. The Class Representatives and Class Counsel Have Adequately Represented the Class

To preliminarily approve a settlement, Rule 23(e)(2)(A) requires a court to find that "the class representatives and class counsel have adequately represented the class." This factor focuses "on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23, Advisory Committee Notes (Dec. 1, 2018) (hereafter "Advisory Committee Notes"). Plaintiffs here have plainly done so.

First, the interests of the Plaintiffs are aligned with those of other settlement class members, as they all suffered and seek to redress the same injuries: unpaid wages for work on the Bank's PPP loan program. *See Amchem Prod., Inc. v. Windsor,* 521 U.S. 591, 625–26 (1997) ("[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.") (cleaned up).

Next, Plaintiffs' counsel are highly experienced in complex class actions and wage-and-hour litigation in particular. *See* Hanson Decl., ¶¶ 56-67; *Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014) (stating with respect to Stueve Siegel Hanson LLP that "it appears that plaintiffs' counsel's experience in wage-hour class actions has unmatched depth."). This knowledge and experience enabled Plaintiffs' counsel to efficiently prosecute the case and negotiate a well-informed settlement. Counsel thoroughly investigated the facts of the case, both through formal and informal discovery. And their painstaking research and creative approach allowed them to develop novel strategies to overcome the challenges posed by the Bank's defenses. This paid significant dividends for the class. Indeed, absent counsel's efforts, class members almost certainly would have ended up with *nothing* as the limitations periods on their claims would have lapsed absent Plaintiff's counsel acting quickly to file and prosecute the cases now consolidated before this Court for settlement. This factor weighs strongly in favor of approval.

II. The Proposal was Negotiated at Arm's Length

This factor focuses on whether the settlement negotiations "were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e), Advisory Committee Notes. Here, this factor is satisfied because the settlement was achieved after three arm's-length mediations presided over by three separate well-respected mediators (Judge Gandhi, Mr. Fuchsman, and then finally Mr. Dickstein). Further, final settlement in this case required weeks of follow-up conferences presided over by Mr. Dickstein, which ultimately culminated in a mediator's proposal accepted by both parties. Hanson Decl. at ¶¶ 29-32. That plainly evidences a hard-fought, arm's length negotiation. *See, e.g., Marcus v. Kansas Dep't of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (finding this factor satisfied where the settlement was reached "by experienced counsel for the class"); *In re Molycorp., Inc. Sec. Litig.*, 2017 WL 4333997, at *4 (D.

Colo. Feb. 15, 2017), *report and recommendation adopted*, 2017 WL 4333998 (D. Colo. Mar. 6, 2017) ("Utilization of an experienced mediator during the settlement negotiations supports a finding that the settlement is reasonable, was reached without collusion and should therefore be approved."). Indeed, some courts have found that "participation of an independent mediator . . . virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016). This factor favors approval.

III. The Relief Provided to the Class is Adequate.

Rule 23(e) charges the Court to consider whether "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C)(i-iv).

In this case, there is no doubt these factors point towards settlement approval. All the factors identified by Rule 23(e)(2)(C) should be viewed in light of the meaningful monetary benefit this settlement confers on class members, the direct mailing of checks, and the tailored release resolving claims about a legacy program that largely concluded five years ago. The average payment to class members is estimated to be approximately $1,440—a meaningful amount by any measure, but especially so when considering the incentive plans at issue in this case were generally in effect for only a few months. Based on the Bank's wage payment and timekeeping records, analyzed by Plaintiffs' retained data experts, Plaintiffs believe that the average amount of unpaid wages owed to nonexempt class members approximates $ 2,000. Hanson Decl. at ¶ 45. And for exempt employees, counsel and their experts estimate that the amount is about $3,000. *Id.* at ¶ 46.

That results in total losses to the 7,701 class members in the amount of approximately $17,500,000. As such, the gross settlement amount of $17.5 million represents essentially the total amount of unpaid wages at issue. Even on net, after the payment of attorneys' fees, expenses, and service awards, that's still about 64% of the total unpaid wages. That marks a very favorable result considering the risks posed by class certification, summary judgment, trial, and appeal. *See, e.g., Kauffman v. U-Haul Int'l, Inc.*, 2019 WL 1785453, at *3 (E.D. Pa. Apr. 24, 2019) (approving wage and hour settlement where "Plaintiff will receive payment of a meaningful portion (approximately 28%) of his alleged unpaid overtime wages..."); *Dillworth v. Case Farms Processing, Inc.,* 2010 WL 776933, at *8 (N.D. Ohio Mar. 8, 2010) (approving a class action settlement that recovered "approximately one-third of claimed unpaid wages" and finding "there can be no doubt that the results achieved for the class members are exceptional.").

A. The relief provided to the class is adequate considering the costs, risks, and delay of trial and appeal.

Considering the costs, risks, and delay of trial and appeal, the proposed settlement satisfies Rule 23(e)(2)(C)(i). As noted above, the settlement confers a significant monetary payment on class members as the $17,500,000 common fund represents significant relief on a *per capita* basis—indeed, more than $1,400.00 on average. That is a noteworthy outcome in any wage-and-hour case, but it is particularly so when weighed against the procedural and substantive risks in the case.

Counsel believe that Plaintiffs' claims are highly meritorious. But on a candid assessment, the road to class-wide recovery was rocky and uncertain. Indeed, to get most of the affected employees any recovery at all, Plaintiffs would have had to prevail on their motion to certify a class comprising 48 separate states and corresponding state laws—a proposition the Bank vigorously contested. *See* Dkt. 43. Moreover, Plaintiffs' argument for the timeliness of the vast

majority of the employees' claims hinged on the Court's application of Kansas' COVID-19 tolling order to out-of-state class members, a contention that rested on the vitality of a relatively obscure 1987 Kansas Supreme Court opinion (Westlaw lists only thirteen cases having cited it in more than 38 years since it was decided; none since 2011). *See Wortman v. Sun Oil Co.* 241 Kan. 226, 232, 755 P.2d 488, 493 (1987) And to certify a class of exempt employees, the Court would have to find that their variances in job duties did not give rise to individualized inquiries precluding class certification, an inquiry complicated by the fact that the Bank did not keep records of the duties and work performed by employees on the temporary PPP loan program.

Plaintiffs also faced significant resistance on the merits. Indeed, the Bank vigorously contested nearly every aspect of their claims. As to the exempt-classified workers, the company relied heavily on a regulation stating that employees do not lose their exemption when they perform nonexempt work responding to "emergencies", *see* 29 CFR § 541.706, along with a Department of Labor bulletin stating that this principle applied to temporary assignments in response to the COVID-19 pandemic. And as to the nonexempt workers, Plaintiffs' theory of recovery turned on the interpretation of a complex web of regulations regarding when certain premium payments or incentives can be credited by an employer toward its statutory overtime obligations and when they cannot. *See* 29 CFR §§ 778.201(c); 778.202; 778.203; 778.207; 778.211. Plaintiffs believe they had the better of each of these arguments. But all required the application of rarely litigated legal principles to unique factual circumstances. That meant a high degree of risk.

Indeed, Plaintiffs would have faced significant risk at class certification, summary judgment, trial, and possibly then on appeal, all of which would have been lengthy and complex. *See, e.g., In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y.

2000) (recognizing that "[m]ost class actions are inherently complex and settlement avoids the costs, delays, and multitude of other problems associated with them"). The settlement, in contrast, delivers a real money to class members that approximates their claimed losses right with no risk. *See Grant v. Capital Mgmt. Servs., L.P.*, 2014 WL 888665, at *3 (S.D. Cal. Mar. 5, 2014) (The court shall consider the vagaries of the litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, it has been held proper to take the bird in hand instead of a prospective flock in the bush") (citations and quotations omitted). This factor strongly supports approval.

B. The relief provided to the class is adequate considering the effectiveness of distributing relief to the class.

Under this factor, the Court "scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims" and "should be alert to whether the claims process is unduly demanding." Advisory Committee Notes. In this case, class members are not required to file any claim forms or take any affirmative steps to receive a settlement payment. Instead, unless class members request to be excluded, they will automatically be sent a check for their settlement amount. Settlement Agreement, § III(I)(1). The parties will provide the Settlement Administrator with the relevant data, including the settlement class members' last known mailing addresses. The Settlement Administrator will maintain a dedicated toll-free phone line and email address to answer class member questions and a website for real-time information. Plaintiffs' notice plan is the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B). settlement class members will have an opportunity to object to or exclude themselves from the Settlement. The procedures and deadlines for filing objections and requests for exclusion will be conspicuously

listed on the Notice and will inform settlement class members that they will be bound by the Settlement unless they timely opt-out. This factor weighs in favor of preliminary approval.

C. The relief provided to the class is adequate considering the terms of the proposed award of attorneys' fees.

This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." Advisory Committee Notes. In this case, Plaintiffs' counsel will petition the Court for an award of attorneys' fees of up to one-third of the common fund plus reasonable expenses of approximately $250,000. Hanson Decl. at ¶ 49.

At the final approval stage, Plaintiffs will fully brief the fairness and reasonableness of the requested attorneys' fees and expenses. Preliminary though, it is notable that the requested fee is well-supported by district and circuit precedent *See, e.g., In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126 (10th Cir. 2023) (sustaining award of one-third of the common fund); *Hershey v. ExxonMobil Oil Corp.*, 2012 WL 5306260, at *8 (D. Kan. Oct. 26, 2012) ("an award of one-third the total settlement award is reasonable and appropriate."). Moreover, the Settlement Agreement makes clear that the settlement is not contingent on the Court awarding a particular fee. Ex. 1, Settlement Agreement, § III(H)(4). The fee provision favors preliminary approval of the settlement.

D. The relief provided to the class is adequate considering there are no agreements required to be identified under Rule 23(e).

The only agreement between the parties is the Settlement Agreement. Hanson Decl. at ¶ 34. This factor weighs in favor of settlement approval.

IV. The Settlement Agreement Treats Class Members Equitably to One Another

This factor seeks to prevent the "inequitable treatment of some class members *vis-a-vis* others." Advisory Committee Notes. In this case, Plaintiffs' counsel worked diligently to create an allocation formula that ties distribution to the strength of each class members' claims. Class

member's settlement allocation is based on the number of weeks worked on the PPP loan program, total incentives earned, rates of pay, and whether they were classified as exempt or nonexempt, recognizing that employees who worked on the program for longer periods sustained greater losses, and that exempt employees were underpaid what they were owed by a greater amount than nonexempt workers. *See* Ex. B to Settlement Agreement, Plan of Allocation. Further, class members who worked in California or New York will receive additional enhancements to account for the relatively stronger protections provided by their states' wage-and-hour laws. *Id.* at ¶ 43. Thus, the class members with higher potential damages and strongest claims will recover the largest settlement payments. This factor weighs in favor of settlement approval.

CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

After determining that the Court "will likely be able to … approve the proposal under Rule 23(e)(2)," the second half of the preliminary approval inquiry is whether the Court "will likely be able to . . . certify the class." Fed. R. Civ. P. 23(e)(1)(B)(ii). Plaintiffs request that the Court certify the class for settlement purposes only. And at the outset it should be noted that the Bank vigorously disagrees that the case would be suitable for class treatment absent settlement and if the litigation were to continue. This is amply demonstrated but the Bank's opposition to Plaintiffs' motions for certification in both this Court and the Northern District of California before settlement was reached.[2]

Certification of a class for settlement purposes is proper when the plaintiff demonstrates that the proposed class and proposed class representative meet the four threshold prerequisites of Rule 23(a) commonly known as the "numerosity," "commonality," "typicality," and "adequacy of

[2] The Bank has agreed to not oppose this motion on the understanding that the following analysis is for purposes of certifying a settlement class only.

representation" elements, along with at least one of the three provisions of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). Where, as here, plaintiffs seek certification under Rule 23(b)(3), they must also demonstrate that common questions of law or fact predominate over individual issues and that maintaining the suit as a class action is superior to other methods of adjudication. Fed. R. Civ. P. 23(b)(3); *Amchem Prods.*, 521 U.S. at 615-16. As a practical matter, "[j]udicial economy factors and advantages over other methods for handling the litigation" underlie these two tests. *Emig v. Am. Tobacco Co. Inc.*, 184 F.R.D. 379, 388 (D. Kan. 1998). Plaintiffs are likely to satisfy these requirements here.

Moreover, the settlement class is precisely ascertainable, as it is comprised only of employees who worked on the PPP loan program, as demonstrated by the Bank's employment records. *See Gomez v. Epic Landscape Prods., L.C.*, 2024 WL 4605146, at *10 (D. Kan. Oct. 29, 2024) (ascertainability met when class is "identifiable [through] Defendants' employment records.").

I. Numerosity is Likely to be Satisfied

Rule 23(a)(1) requires Plaintiffs to show that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[A] class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone." 1 Newberg and Rubenstein on Class Actions § 3:12 (6th ed.); *Whitton v. Deffenbaugh Indus., Inc.*, 2016 WL 4493570, at *4 (D. Kan. Aug. 26, 2016) ("In light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the Plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone."). Here, there are more than seven thousand class members. *See* Hanson Decl. at ¶ 37. Numerosity is thus easily met.

II. Commonality is Likely to be Satisfied

In addition, Rule 23(a) requires that questions of fact or law must exist that are common to the class as a whole. Fed. R. Civ. P. 23(a)(2). "[F]or purposes of Rule 23(a)(2) 'even a single common question' will do," *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011) (cleaned up); *accord DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1195 (10th 2010), so long as "the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes,* 564 U.S. at 350.

Here, such common questions abound, including:

- Whether the Bank properly calculated and paid its employees' PPP incentives in conjunction with overtime;
- Whether the Bank used an improper pay calculation formula;
- Whether the Bank breached its contractual agreements, whose terms were uniform and standardized as to all class members, when it counted statutory overtime payments toward its PPP incentive obligations;
- Whether the Bank breached its contractual agreements, whose terms were uniform and standardized as to all class members, when it treated its PPP incentive promises as "enhanced overtime";
- Whether the Bank violated state overtime laws when it counted PPP incentive payments toward its overtime obligations, or otherwise failed to include all PPP incentives earned in its regular rate calculations; and
- Whether the Bank violated state overtime laws when it failed to pay any overtime to PPP employees who were classified as exempt.

The Rule 23(a)(2) commonality requirement is thus satisfied.

III. Typicality is Likely to be Satisfied

Rule 23(a)(3) requires Plaintiffs show that "the claims of the representative parties are typical of the claims of the class." Fed. R. Civ. P. 23(a)(3). This "typicality" requirement "helps ensure that the plaintiff's interests are aligned with those of the represented group, so that in pursuing his own claims, the named plaintiff will also advance the interests of the class members."

1 Newberg and Rubenstein on Class Actions § 3:29 (6th ed.) (cleaned up). Its test is "not demanding", *Komoroski v. Util. Serv. Partners Priv. Label, Inc*., 2017 WL 3261030, at *5 (W.D. Mo. July 31, 2017) (quotations omitted), requiring only that the lead plaintiffs' claims be "reasonably co-extensive with those of absent class members." *Salter v. Quality Carriers, Inc*., 2021 WL 2333098, *7 (C.D. Cal. 2021). Typicality is satisfied when "the claims of the class representative and class members are based on the same legal or remedial theory." *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988); *see also Riley v. PK Mgmt., LLC*, 2019 WL 6998757, at *4 (D. Kan. Dec. 20, 2019) ("The claims of the representative plaintiffs need not be identical [] to those of the other class members.").

Here, Plaintiffs seek recovery of unpaid overtime wages and promised PPP incentive payments—just like the rest of the affected employees. Further, they have sought that relief by invoking the same statutory and common law principles as the class as a whole. They thus satisfy the typicality requirement.

IV. Adequacy is Likely to be Satisfied

Rule 23(a)(4) requires Plaintiffs to show that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). They meet this requirement for substantially the same reasons they satisfy typicality. After all, "the adequacy of the class representative prong of Rule 23(a)(4) tends to merge with the requirement that the class representative's claims be typical of the class." 1 Newberg and Rubenstein on Class Actions § 3:57 (6th ed.). The adequacy requirement asks "whether the proposed representatives have any conflicts of interest with other class members", and whether they will "prosecute the action vigorously on behalf of the class." *Rutter & Wilbanks Corp. v. Shell Oil Co*., 314 F.3d 1180, 1187-88 (10th Cir. 2002). Plaintiffs here advance the same claims to obtain the same relief as the other employees.

Their success and the success of the classes are inherently intertwined. They are thus adequate class representatives.

Rule 23(a)(4) also requires that class counsel "fairly and adequately protect the interests of the class." *See id.* at 1187. Here, Plaintiffs have retained qualified counsel experienced in complex wage and hour litigation to protect the interests of the class. *See Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012). Plaintiffs thus meet the adequacy requirement.

V. Predominance is Likely to be Satisfied

Predominance is satisfied if "questions of law or fact common to class members predominate over any questions affecting only individual members." Rule 23(b)(3); *see Amgen, Inc. v. Conn. Retirement Plans and Trust Funds*, 568 U.S. 455, 459 (2013). This predominance requirement does not require that *all* questions of law or fact be common. *E.g.*, *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014) ("Class-wide proof is not required for all issues."). Rather, it requires only that the common questions *predominate* over individual questions. *Id*. As the Supreme Court distilled it, "[t]he predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). Common questions are those wherein "the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof", as opposed to ones where "members of a proposed class will need to present evidence that varies from member to member." *Id.* In essence, "[t]he predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *CGC Holding Co. v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014).

Here, each class member's claim hinges on one of two overarching questions. For nonexempt employees, it is whether the Bank's method of calculating the PPP incentive payments

in conjunction with statutory overtime complied with the law. And for exempt employees, it is whether PPP loan processing work qualified for statutory exemption. As courts have recognized, predominance is met when the focus is on the defendant's conduct, rather than that of the individual class members. *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002) ("[T]o determine predominance, the Court looks to whether the focus of the proposed class action will be on the words and conduct of the defendants rather than on the behavior of the individual class members."). Here, the focus of Plaintiffs' theories is squarely on the Bank's uniform conduct. Predominance is thus met.

VI. Superiority is Likely to be Satisfied

Rule 23(b)(3) requires that a class action is "superior to other available methods for the fair and efficient adjudication of the controversy," and sets forth the following factors:

> The matters pertinent to the findings include: (A) the class members' interest in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). The superiority requirement ensures that a class action will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Amchem*, 521 U.S. at 615 (internal quotation marks omitted); *see also CGC Holding Co. v. Broad & Cassel*, 773 F.3d 1076, 1096 (10th Cir. 2014). Because here the claims are being certified for purposes of settlement, questions regarding the manageability of the case for trial purposes are not to be considered. *See Amchem Prod., Inc.*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if

tried, would present intractable management problems … for the proposal is that there be no trial.").

A class action is the only reasonable method to fairly and efficiently adjudicate settlement class members' claims against Defendants. *See, e.g., Phillips Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available"). Certification avoids numerous individual actions (for those who can afford to sue), prevents inconsistent results, and ensures that settlement class members with smaller claims have an opportunity for redress. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 117 (S.D.N.Y. 2010) ("Many of the class members' claims will be small relative to the high costs of maintaining an antitrust action," and therefore "[s]treamlining the litigation in one forum will simplify the process and avoid inconsistency."). The superiority requirement is satisfied.

THE PROPOSED NOTICE SATISFIES RULE 23

When a class action lawsuit is settled, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). To that end, Rule 23 requires "the best notice that is practicable under the circumstances, including individual notice to all class members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Such notice can be effectuated through "United States mail, electronic means, or other appropriate means." *Id.* Also, any notice "must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who

requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed R. Civ. P. 23(c)(2)(B).

Here, all the above requirements are satisfied. Under the Settlement Agreement, the Bank will provide the Settlement Administrator with name, last known address, wage data, and Social Security Number for each class member. Settlement Agreement, § III(A)(1). The Administrator will mail each class member an individualized notice. *Id.* at § III(C)(1). If the post office returns any notice, the Settlement Administrator will work diligently to obtain an updated address and remail the notice. *Id.* at § III(C)(2). Class members will have 45 days from the mailing of the notice to exclude themselves from or object to the settlement. *See* Ex. A to Settlement Agreement, Notice Form.

Moreover, the notice forms are written in clear language and accurately describe the nature of the action, the settlement, the scope of the release, and the process class members must follow to exclude themselves from or object to the settlement. *Id.* This detailed notice weighs in favor of settlement approval. Likewise, class members can find more information about the claims in the case and the settlement (including reviewing the Settlement Agreement) on the settlement website.

THE COURT SHOULD APPOINT PLAINTIFFS' COUNSEL AS CLASS COUNSEL

When a class action lawsuit is settled prior to class certification, the Court "may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23(g)(3). Then, at the final approval stage, these lawyers can seek to be appointed class counsel in conjunction with the certification of the settlement class. Fed. R. Civ. P. 23(g)(1). Here, George A. Hanson, Alexander T. Ricke, and Caleb J. Wagner of Stueve Siegel Hanson LLP respectfully ask the Court to appoint them interim class counsel. As noted above, counsel are highly experienced in wage-and-hour class action litigation and have

demonstrated the hard work, legal scholarship, experience, and resources they bring to bear, resulting in the Settlement now before the Court. In addition, they have expended considerable time and resources investigating and vigorously litigating the claims in this action. The Court should thus appoint them as interim Class Counsel under Rule 23(g)(3) to act on behalf of the Settlement Class in carrying out the Notice and Claims process.

PROPOSED TIMELINE OF SETTLEMENT EVENTS

For the Court's convenience, the parties' proposed dates and deadlines leading to a Final Fairness Hearing are provided below and in the proposed order separately submitted to the Court.

EVENT	DATE
Defendant provides CAFA notice required by 28 U.S.C. § 1715(b)	Within 15 business days after the filing of Plaintiff's Motion for Preliminary Approval
Defendant to Provide Class Member Information	Within 15 business days following entry of Preliminary Approval Order
Notice Date	Within 10 business days of Defendant Providing Class Member Information
Notice Program Concludes	45 days after the Notice Date
Compliance with CAFA waiting period under 28 U.S.C. § 1715(d)	90 days after the appropriate governmental officials are served with CAFA notice
Opt-Out/Exclusion Deadline	45 days after the Notice Date
Objection Deadline	45 days after the Notice Date
Motion for Attorneys' Fees, Expenses, and Service Awards to the Plaintiff	21 days Prior to Opt-Out and Objections Deadlines
Motion for Final Approval to be filed by Class Counsel	14 days before the Final Approval Hearing
Final Approval Hearing	No earlier than 100 days after entry of Preliminary Approval Order

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request the Court grant the unopposed motion to direct class notice and preliminarily approve class action settlement and the relief prayed

for therein, enter the proposed order attached here as Exhibit 3, including setting a final fairness hearing, and for any other relief the Court deems appropriate under the circumstances.

Dated: August 12, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on August 12, 2025, the foregoing document was filed with the Court's CM/ECF system, which served a copy of the foregoing document on all counsel of record.

/s/ *George A. Hanson*
Counsel for Plaintiff