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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STEVE JOHNSON and SCOTT
SOLLITT, as individuals and on behalf of
all others similarly situated,

Plaintiffs,

v.

U.S. BANK NATIONAL
ASSOCIATION,

Defendant.

Case No.: 19-CV-286 JLS (LL)

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

(ECF No. 26)

Presently before the Court is Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (ECF No. 26). The Court vacated the hearing and took the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). Because the settlement is fundamentally fair, reasonable, and adequate, the Court **GRANTS** the Motion for Preliminary Approval.

BACKGROUND

I. Factual and Procedural Background

Plaintiffs Steve Johnson, Scott Sollitt, and James Loud bring this motion seeking preliminary approval of a pre-certification non-reversionary wage and hour class action settlement of three separate actions. Mot. at 6. Plaintiffs are individuals who were

1 employed as mortgage loan originators in California by Defendant U.S. Bank National
2 Association. *Id.* The three actions involved in the Settlement are (1) this action, *Steve*
3 *Johnson et al. v. U.S. Bank National Association*, Case No. 19-CV-286-JLS-LL (“*Johnson*
4 *I*”); (2) *James Loud v. U.S. Bank National Association*, Case No. 18-CV-1235-DOC-DFM
5 (“*Loud*”) pending in the Central District of California; and (3) *Steve Johnson v. U.S. Bank*
6 *National Association*, Case No. 37-2019-20364-CU-OE-NC (“*Johnson II*”) pending in the
7 Superior Court of the State of California for the County of San Diego. *Id.* The proposed
8 Settlement resolves all three actions. *Id.*

9 Plaintiffs, across all three actions, assert claims under various California laws for:
10 (1) failure to authorize rest periods, including failure to separately compensate class
11 members for rest periods; (2) failure to compensate class members for all hours worked,
12 including nonproductive time not spent on sales activities; (3) failure to provide accurate
13 wage statements; (4) failure to timely pay all wages due upon separation; (5) failure to
14 properly calculate and pay overtime wages; (6) failure to pay earned commissions;
15 (7) failure to provide meal periods; (8) violation of Unfair Competition Law; and (9) civil
16 penalties under the Private Attorneys General Act. *Id.* at 8–9.

17 The Parties willingly collaborated to conduct both formal and informal discovery,
18 including exchanges of documents and taking of depositions. *Id.* at 9–12. Armed with this
19 extensive discovery, the Plaintiff Loud and Defendant engaged in a private mediation and,
20 after further discussions with all the Parties involved, agreed to a mediator’s proposal for
21 an omnibus settlement of all three actions. *Id.* at 9, 12.

22 In their present Motion, Plaintiffs seek an Order: (1) granting preliminary approval
23 of the proposed Settlement; (2) certifying the proposed Settlement Class for settlement
24 purposes only; (3) approving the distribution of the proposed class notice; (4) appointing
25 Farnaes & Lucio, APC, Hartley LLP, Haffner Law PC and Stevens LC as Class Counsel;
26 named Plaintiffs Johnson, Sollitt, and Loud as Class Representatives; and CPT Group, Inc.
27 as Settlement Administrator; (5) granting leave to file a second amended complaint in
28 *Johnson I*; and (6) setting a final approval hearing and hearing on Class Counsel’s motion

1 for attorneys’ fees and costs and the Class Representatives’ service awards request. Lucio
2 Decl. ¶ 2.

3 **SETTLEMENT TERMS**

4 The Parties have agreed to settle the Settlement Class claims for a Gross Settlement
5 Amount (“GSA”) of \$6,500,000.00. From this amount will be deducted: (a) all Settlement
6 payments to Class Members eligible for Settlement payments; (b) attorneys’ fees of up to
7 \$2,145,000.00 (33% of the GSA); (c) litigation costs of up to \$30,000.00; (d) Class
8 Representative Service Awards of \$25,000.00 to Loud and \$15,000.00 each to Johnson and
9 Sollitt; (e) PAGA payment of \$325,000.00; and (f) settlement administrator expenses paid
10 to CPT Group, Inc. of up to \$14,500.00. *Id.* at 12–13 (citing Lucio Decl. ¶ 34).

11 After these deductions, the Net Settlement Amount, estimated to be \$4,011,750.00,
12 will be distributed to the Settlement Class Members who do not opt out. *Id.* Defendant
13 will automatically make Settlement payments to Class Members (unless they choose to opt
14 out) based on the formula set forth in the Settlement Agreement. *Id.* at 13–14 (citing Lucio
15 Decl. ¶¶ 35–39. Individual Settlement Payments will remain open and negotiable for 180
16 days after issuance and any uncashed checks will be donated to Legal Aid at Work, a
17 Section 501(c)(3) corporation, as a *cy pres* beneficiary. *Id.* at 13 (citing Lucio Decl. ¶ 37).

18 **DISCUSSION**

19 **I. Rule 23 Settlement Class Certification**

20 Before granting approval of a class action settlement agreement, the Court must first
21 determine whether the proposed class can be certified. *Amchem Prods. v. Windsor*, 521
22 U.S. 591, 620 (1997) (indicating that a district court must apply “undiluted, even
23 heightened, attention [to class certification] in the settlement context” in order to protect
24 absentees). To certify a class, each of the four requirements of Federal Rule of Civil
25 Procedure 23(a) must first be met. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180,
26 1186 (9th Cir. 2001). Rule 23(a) allows a class to be certified only if:

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1 (1) the class is so numerous that joinder of all members is
2 impracticable;

3 (2) there are questions of law or fact common to the class;

4 (3) the claims or defenses of the representative parties are typical
5 of the claims or defenses of the class; and

6 (4) the representative parties will fairly and adequately protect
7 the interests of the class.

8 Fed. R. Civ. P. 23(a).

9 In addition to Rule 23(a)'s requirements, the proposed class must also satisfy the
10 requirements of one of the subdivisions of Rule 23(b). *Zinser*, 253 F.3d at 1186. Here,
11 Plaintiffs seek to certify the Settlement Class under subdivision Rule 23(b)(3), which
12 permits certification if “questions of law or fact common to class members predominate
13 over any questions affecting only individual class members,” and “a class action is superior
14 to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R.
15 Civ. P. 23(b)(3).

16 Plaintiffs seek conditional certification of a class defined as “all individuals who
17 were employed as mortgage loan originators in California at any time from July 13, 2014
18 until the date the Court enters an order granting preliminary approval of the Settlement”
19 (the “Settlement Class”). *Id.* at 7 (citing Lucio Decl. Ex. A ¶ 38).

20 **A. Rule 23(a)(1): Numerosity**

21 Federal Rule of Civil Procedure 23(a)(1) requires that a class must be “so numerous
22 that joinder of all members is impracticable.” “[C]ourts generally find that the numerosity
23 factor is satisfied if the class comprises 40 or more members and will find that it has not
24 been satisfied when the class comprises 21 or fewer.” *Celano v. Marriott Int’l, Inc.*, 242
25 F.R.D. 544, 549 (N.D. Cal. 2007).

26 The proposed Settlement Class consists of approximately 776 individuals, all of
27 whom were (or are currently) employed by Defendant. Mot. at 29. Accordingly, joinder

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1 of all members would be impracticable for purposes of Rule 23(a)(1), and the numerosity
2 requirement is satisfied.

3 **B. Rule 23(a)(2): Commonality**

4 Federal Rule of Civil Procedure 23(a)(2) requires that there be “questions of law or
5 fact common to the class.” Commonality requires that “the class members ‘have suffered
6 the same injury.’” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011) (quoting
7 *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). “The existence of shared legal
8 issues with divergent factual predicates is sufficient, as is a common core of salient facts
9 coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150
10 F.3d 1011, 1019 (9th Cir. 1998).

11 Plaintiffs allege Defendant applied uniform employment policies, including the
12 commission-only pay plan that violated California law, to all California mortgage loan
13 originators that would be included in the Settlement Class. Mot. at 29. The proposed
14 Settlement Class Members have therefore “suffered the same injury” arising from a
15 “common core of salient facts.” Accordingly, it is appropriate for these issues to be
16 adjudicated on a class-wide basis, and Rule 23(a)(2) is satisfied.

17 **C. Rule 23(a)(3): Typicality**

18 To satisfy Federal Rule of Civil Procedure 23(a)(3), the named plaintiffs’ claims
19 must be typical of the claims of the absent class members. The typicality requirement is
20 “permissive” and requires only that the plaintiffs’ claims “are reasonably coextensive with
21 those of absent class members.” *Hanlon*, 150 F.3d at 1020. “The test of typicality ‘is
22 whether other members have the same or similar injury, whether the action is based on
23 conduct which is not unique to the named plaintiffs, and whether other class members have
24 been injured by the same course of conduct.’” *Hanon v. Dataproducts Corp.*, 976 F.2d
25 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)).
26 “[C]lass certification should not be granted if ‘there is a danger that absent class members
27 will suffer if their representative is preoccupied with defenses unique to it.’” *Id.* (citation
28 omitted).

1 Here, Loud, Johnson, and Sollitt (together, the “Class Representatives”) allege that,
2 like the Settlement Class Members, they each worked for Defendant as mortgage loan
3 originators and each were injured by Defendant’s uniform practices of paying mortgage
4 loan originators with commissions only and not paying separately for non-sales time. Mot.
5 at 7, 29. The Class Representatives have therefore suffered the same injuries related to
6 Defendants’ policies and practices as the absent Class Members. Accordingly, the Court
7 finds the Class Representatives’ claims are typical of the Settlement Class Members claims,
8 thus satisfying Rule 23(a)(3).

9 ***D. Rule 23(a)(4): Adequacy***

10 Federal Rule of Civil Procedure 23(a)(4) requires that the named representatives
11 fairly and adequately protect the interests of the class. “To satisfy constitutional due
12 process concerns, absent class members must be afforded adequate representation before
13 entry of judgment which binds them.” *Hanlon*, 150 F.3d at 1020 (citing *Hansberry v. Lee*,
14 311 U.S. 32, 42–43 (1940)). To determine legal adequacy, the district court must resolve
15 two questions: “(1) do the named plaintiffs and their counsel have any conflicts of interest
16 with other class members, and (2) will the named plaintiffs and their counsel prosecute the
17 action vigorously on behalf of the class?” *Id.*

18 Here, there is no reason to believe that the Class Representatives and Class Counsel
19 have any conflict of interest with the Settlement Class Members. The Class
20 Representatives’ claims are consistent with the other mortgage loan originators they seek
21 to represent. Mot. at 29.

22 Additionally, there is no reason to believe that the Class Representatives and Class
23 Counsel have failed to vigorously investigate and litigate this case. The Class
24 Representatives have retained competent counsel who have conducted extensive discovery
25 and mediation in this case. *Id.* at 9–12. Furthermore, Class Counsel have significant class
26 action litigation experience, are knowledgeable about the applicable law, and will continue
27 to commit their resources to further the interests of the Class. *Id.* at 29–30. Accordingly,

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1 the Court finds the Class Representatives and Class Counsel adequately represent the
2 proposed Settlement Class members, and Rule 23(a)(4)'s adequacy requirement is met.

3 ***E. Rule 23(b)(3): Predominance and Superiority***

4 Federal Rule of Civil Procedure 23(b)(3) permits certification if “questions of law
5 or fact common to class members predominate over any questions affecting only individual
6 class members,” and “a class action is superior to other available methods for fairly and
7 efficiently adjudicating the controversy.”

8 ***1. Predominance***

9 “The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are
10 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623.
11 “Rule 23(b)(3) focuses on the relationship between the common and individual issues.”
12 *Hanlon*, 150 F.3d at 1022.

13 Here, Plaintiff’s content the common issues include, but are not limited to, the
14 following: (1) Whether Class Members were compensated at least minimum wage for all
15 hours worked; (2) whether Class Members were allowed compliant meal periods;
16 (3) whether Class Members were paid for all commissions earned; (4) whether there was
17 unfair competition; and (5) whether there were other labor code violations such as failure
18 to pay waiting time penalties. Mot. at 22–23. Further, for purposes of settlement, Class
19 Members are not required to prove any evidentiary or factual issues that could arise in
20 litigation. Therefore, the Court finds the predominance requirement of Rule 23(b)(3) is
21 satisfied.

22 ***2. Superiority***

23 The final requirement for certification pursuant to Federal Rule of Civil Procedure
24 23(b)(3) is “that a class action [be] superior to other available methods for fairly and
25 efficiently adjudicating the controversy.” The superiority inquiry requires the Court to
26 consider the four factors listed in Rule 23(b)(3):

27 (A) the class members’ interests in individually controlling the
28 prosecution or defense of separate actions;

1 (B) the extent and nature of any litigation concerning the
2 controversy already begun by or against class members;

3 (C) the desirability or undesirability of concentrating the
4 litigation of the claims in the particular forum; and

5 (D) the likely difficulties in managing a class action.

6 *See also Zinser*, 253 F.3d at 1190. A court need not consider the fourth factor, however,
7 when certification is solely for the purpose of settlement. *Amchem*, 521 U.S. at 620. The
8 superiority inquiry focuses ““on the efficiency and economy elements of the class action
9 so that cases allowed under [Rule 23(b)(3)] are those that can be adjudicated most
10 profitably on a representative basis.”” *Zinser*, 253 F.3d at 1190 (quoting 7A Charles Alan
11 Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1780, at 562 (2d ed. 1986)).
12 A district court has “broad discretion” in determining whether class treatment is superior.
13 *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

14 Here, all Settlement Class Members’ claims involve the same issues arising from the
15 same factual bases, and class treatment would “(1) accomplish judicial economy by
16 avoiding multiple suits, and (2) protect the rights of persons who might not be able to
17 present claims on an individualized basis.” Mot. at 30. Individual cases would consume a
18 significant amount of the Court’s and the Class Members’ resources. Further, the Class
19 Members interests in individually controlling the litigation is minimal, especially given
20 that the same broad-based policy and practices would be at issue. Thus, class treatment is
21 the superior method of adjudicating this controversy and the superiority requirement of
22 Rule 23(b)(3) is met.

23 ***F. Class Certification Conclusion***

24 For the reasons stated above, the Court finds the Settlement Class meets the
25 requirements Rule 23(a) and 23(b)(3). Accordingly, the Court **CERTIFIES** the Settlement
26 Class for settlement purposes only.

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II. Rule 23 Preliminary Fairness Determination

Having certified the Settlement Class, the Court must next make a preliminary determination as to whether the proposed settlement is “fair, reasonable, and adequate” pursuant to Federal Rule of Civil Procedure 23(e). Relevant factors to this determination include:

the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon, 150 F.3d at 1026 (citing *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)). Due to the “dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative,” any “settlement approval that takes place prior to formal class certification requires a higher standard of fairness.” *Id.*

A. Rule 23(e) Factors

1. Strength of Plaintiff’s Case, Risk, Expense, Complexity, and Likely Duration of Further Litigation

To succeed on the merits, Plaintiff would have to prove that Defendant actually engaged in the practices and policies alleged and that those practices and policies violated the law. *See* Mot. at 16–20. Were the case to proceed, there is a strong likelihood of protracted and contentious litigation. Defendant continues to dispute all aspects of Plaintiffs’ claims, including class certification (absent the Settlement). Plaintiffs acknowledge that Defendant “has strong defenses to Plaintiffs’ claims,” Mot. at 18, and that there is some case law to support those defenses, *id.* at 19. While Plaintiffs believe that Defendant’s case law is “distinguishable and inapplicable,” Plaintiffs nevertheless recognize those defenses create specific risks, including: “(i) denial of class certification;

1 (ii) if class certification was granted, that the Court may later decertify the class; (iii) an
2 adverse ruling on a motion for summary judgment or summary adjudication; (iv) the need
3 for a unanimous jury; (v) the possibility of an unfavorable, or less favorable, result at trial;
4 (vi) the likely possibility that post-trial motions may result in an unfavorable, or less
5 favorable, result at trial; and/or (vii) the possibility of an unfavorable, or less favorable
6 result on appeal, and the certainty that the appeal process would be lengthy.” *Id.* at 18
7 (citing Lucio Decl. ¶ 42). Because of the uncertainty of how claims would be decided, the
8 Parties agreed to the settlement. *Id.* at 9–10, 20. The Court finds that Plaintiffs have strong
9 claims, but that significant risk and uncertainty remains such that continuing the case would
10 lead to protracted and contentious litigation. This factor therefore weighs in favor of the
11 settlement being fair, reasonable, and adequate.

12 2. *Risk of Maintaining Class Action Status Through Trial*

13 The Parties dispute whether the class can be validly certified in the absence of the
14 Agreement. Implicit in this disagreement is the likelihood of initial challenges to class
15 certification and the potential for decertification motions even if class status is granted.
16 Weighed against the fact that Defendant does not oppose a finding that the class elements
17 are met for purposes of this settlement, this factor also weighs in favor of the settlement
18 being fair, reasonable, and adequate.

19 3. *Amount Offered in Settlement*

20 Defendant has agreed to pay \$6.5 million to settle this lawsuit. *Id.* at 20. As
21 previously discussed, Plaintiffs acknowledge serious hurdles and expenses to getting a
22 favorable judgment on the merits. *Id.* at 17–20. Considering these risks, Class Counsel
23 believes, and the Court agrees, that “[t]he recovery of \$6,500,000 for the Settlement Class
24 is an excellent result.” Lucio Decl. ¶ 56. Accordingly, this factor weighs in favor of the
25 settlement being fair, reasonable, and adequate, as it assures class members compensation
26 that may otherwise not be available.

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1 4. *Extent of Discovery Completed and Stage of Proceedings*

2 The Parties assert they have engaged in “exhaustive discovery.” Mot. at 20. The
3 Parties have exchanged and reviewed “voluminous documents,” *id.*, served multiple sets
4 of discovery requests, *id.* at 10–11, and completed several 30(b)(6) and party depositions,
5 *id.* at 20. After conducting this discovery, the Parties engaged in mediation “with
6 experienced wage and hour mediator, Michael J. Loeb, Esq.,” which led to the Settlement.
7 *Id.*

8 It is evident that both Parties, through discovery and independent investigation, were
9 able to learn significant information about the facts and law applicable to this case.
10 Accordingly, it appears the Parties have entered into the Settlement with a strong working
11 knowledge of the strengths and weaknesses of their claims and defenses. This factor
12 therefore weighs in favor of the proposed settlement being fair, reasonable, and adequate.

13 5. *Experience and Views of Counsel*

14 “In considering the adequacy of the terms of a settlement, the trial court is entitled
15 to, and should, rely upon the judgment of experienced counsel for the parties.” *Barbosa v.*
16 *Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013) (citing *Nat’l Rural*
17 *Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Here, Class
18 Counsel believes the Agreement is fair, reasonable, adequate, and in the best interest of the
19 Settlement Class. Mot. at 21. Furthermore, the presumption of reasonableness is warranted
20 in this case based on Class Counsel’s expertise in complex litigation, familiarity with the
21 relevant facts and law, and significant experience negotiating other class and collective
22 action settlements. Given the foregoing, and according the appropriate weight to the
23 judgment of experienced counsel, this factor weighs in favor the proposed settlement being
24 fair, reasonable, and adequate.

25 **B. *Payment Provisions***

26 1. *Attorney’s Fees and Costs*

27 In the Ninth Circuit, a district court has discretion to apply either a lodestar method
28 or a percentage-of-the-fund method in calculating a class fee award in a common fund case.

1 *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002). When
2 applying the percentage-of-the-fund method, an attorneys’ fees award of “twenty-five
3 percent is the ‘benchmark’ that district courts should award.” *In re Pac. Enters. Sec. Litig.*,
4 47 F.3d 373, 379 (9th Cir. 1995) (citing *Six Mexican Workers v. Ariz. Citrus Growers*, 904
5 F.2d 1301, 1311 (9th Cir. 1990)). However, a district court “may adjust the benchmark
6 when special circumstances indicate a higher or lower percentage would be appropriate.”
7 *Id.* (citing *Six Mexican Workers*, 904 F.2d at 1311). “Reasonableness is the goal, and
8 mechanical or formulaic application of either method, where it yields an unreasonable
9 result, can be an abuse of discretion.” *Fischel*, 307 F.3d at 1007.

10 Here, Class Counsel requests the Court approve attorney’s fees not to exceed
11 \$2,145,000.00 (33% of the GSA) and litigation costs not to exceed \$30,000. Mot. at 12.
12 The Agreement specifies that Defendants will not oppose their request. *Id.* At this point,
13 without Class Counsel’s briefing, the Court finds no reasons to award fees that exceed the
14 Ninth Circuit’s 25% benchmark. Class Counsel will need to show what special
15 circumstances exist warranting a higher percentage in their motion for attorney’s fees.

16 2. *Class Representative Payments*

17 The named plaintiffs in class action litigation are eligible for reasonable incentive
18 payments. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). The district court must
19 evaluate each incentive award individually, using “‘relevant factors includ[ing] the actions
20 the plaintiff has taken to protect the interests of the class, the degree to which the class has
21 benefitted from those actions, . . . the amount of time and effort the plaintiff expended in
22 pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.’” *Id.* (citing
23 *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

24 Here, the Settlement Agreement provides for incentive payments of \$25,000.00 for
25 Loud and \$15,000.00 each for Johnson and Sollitt. Mot. at 27. Plaintiffs contend that the
26 service awards are reasonable because the Class Representatives were instrumental in
27 achieving the settlement and because the Class Representatives invested a great deal of
28 time and effort into the cases and their resolutions. *Id.* at 28. Furthermore, Plaintiffs assert

1 that these awards are proper to compensate the Class Representatives for the “time, effort,
2 risks undertaken for the potential payment of costs in the event the Actions had been
3 unsuccessful, possible retaliation by potential employers, and for a general release of all
4 claims.” *Id.* at 27–28.

5 “Incentive awards typically range from \$2,000 to \$10,000” and, at least in the
6 Northern District of California, “a \$5,000 payment is presumptively reasonable.” *See*
7 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266–67 (N.D. Cal. 2015). Plaintiffs’
8 request is well above the typical amount found to be reasonable. *See Chu v. Wells Fargo*
9 *Investments, LLC*, No. C-05-4526-MHP, 2011 WL 672645, at *5 (N.D. Cal. Feb. 16, 2011)
10 (noting that \$10,000 incentive awards for three named plaintiffs was “on the high end of
11 the acceptable range” for a 2,752-member class and \$6,900,000 settlement fund). Thus,
12 before final approval of the requested incentive awards, Plaintiffs must provide
13 documentation detailing the time and effort the Class Representatives expended in pursuit
14 of this litigation, the actions the Class Representatives took to benefit the Settlement Class,
15 and the reasons an incentive award above the typical amount awarded is reasonable. *See*
16 *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (“[D]istrict
17 courts must be vigilant in scrutinizing all incentive awards to determine whether they
18 destroy the adequacy of the class representatives. . . . [C]oncerns over potential conflicts
19 may be especially pressing where, as here, the proposed service fees greatly exceed the
20 payments to absent class members.”).

21 *C. Fairness Conclusion*

22 For the reasons stated above, the Court preliminarily finds the Settlement Agreement
23 to be fair and adequate.

24 **III. Notice of Class Certification and Settlement**

25 Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), “[f]or any class certified
26 under Rule 23(b)(3) the court must direct to class members the best notice that is
27 practicable under the circumstances, including individual notice to all members who can
28 be identified through reasonable effort.” Because the Court has determined that

1 certification is appropriate under Rule 23(b)(3), the mandatory notice procedures required
2 by Rule 23(c)(2)(B) must be followed.

3 Where there is a class settlement, Federal Rule of Procedure 23(e)(1) requires the
4 Court to “direct notice in a reasonable manner to all class members who would be bound
5 by the proposal.” “Notice is satisfactory if it ‘generally describes the terms of the
6 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to
7 come forward and be heard.’” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962 (9th Cir.
8 2009) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).
9 “[T]he mechanics of the notice process are left to the discretion of the court subject only
10 to the broad ‘reasonableness’ standards imposed by due process.” *Grunin v. Int’l House*
11 *of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975).

12 According to the Settlement, upon filing of this Order, Defendant will provide the
13 Settlement Administrator, CPT Group Inc., each of the Settlement Class Member’s name,
14 most recent mailing address, social security number, and number of qualifying workweeks
15 for purposes of administering the settlement. Lucio Decl., Ex. A ¶¶ 9, 46. The Settlement
16 Administrator will use this information to calculate each Class Member’s estimated
17 individual settlement payment. *Id.* ¶ 47. Within 21 days of receiving the information, the
18 Settlement Administrator will send Class Notice to all Settlement Class Members via
19 regular First-Class U.S. Mail. *Id.* ¶ 48. Before sending the Notice, the Settlement
20 Administrator will perform a search based on the National Change of Address Database to
21 update all addresses. Mot. at 14. Additionally, the Parties have agreed that the Settlement
22 Administrator will make reasonable attempts to resend Notices that have been returned as
23 non-delivered before the Response Deadline. *Id.* at 13.

24 The proposed Notice explains:

25 (i) their rights to participate in the settlement; (ii) the amount of
26 their estimated Individual Settlement Payment; (iii) that they will
27 receive a Settlement Payment, automatically, without a claim
28 form as long as they did not request exclusion; (iv) the amounts
requested for attorney’s fees, costs, class representative service

1 awards, PAGA payment, and administrator costs; (v) that a
2 current address must be kept on file with the administrator to
3 receive their payment; (vi) how to object to the Settlement and
4 the deadline to do so; (vii) how to request exclusion from the
5 Settlement and the deadline to do so; (viii) how to obtain
6 additional information; (ix) the time, date, and place of the Final
7 Approval Hearing; and (x) of the toll-free telephone and fax
8 numbers, and settlement website, where they may view relevant
9 documents concerning the lawsuit and settlement and get
10 answers to frequently asked questions.

11 Mot. at 14–15. Having thoroughly reviewed the jointly drafted Notice, the Court finds that
12 the method and content of the Notice to be satisfactory. Accordingly, the Court approves
13 the Parties’ proposed notification plan.

14 **CONCLUSION**

15 For the reasons stated above, the Court **GRANTS** the Parties’ Joint Motion for
16 Preliminary Approval of Class Action Settlement, (ECF No. 26). The Court **ORDERS** as
17 follows:

18 **1. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT**

19 **AGREEMENT:** The Settlement Agreement is preliminarily approved as fair, reasonable,
20 and adequate pursuant to Federal Rule of Civil Procedure 23(e)

21 **2. PRELIMINARY CLASS CERTIFICATION:** Pursuant to Federal Rule of Civil

22 Procedure 23(b)(3), the action is preliminarily certified, for settlement purposes only, as a
23 class action on behalf of the following Settlement Class Members with respect to the claims
24 asserted in this Action:

25 **Class:** All individuals who were employed as mortgage loan originators in
26 California by Defendant at any time from July 13, 2014 until the date this
27 Court enters an order granting preliminary approval of Settlement

28 **3. CLASS REPRESENTATIVE, CLASS COUNSEL, AND SETTLEMENT**

ADMINISTRATOR: Pursuant to Federal Rule of Civil Procedure 23, the Court
preliminarily certifies, for settlement purposes only, Plaintiffs Steve Johnson, Scott Sollitt,
and James Loud as Class Representatives; and Farnaes & Lucio, APC, Hartley LLP,

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1 Haffner Law PC, and Stevens LC as Class Counsel. Additionally, the Court approves and
2 appoints CPT Group, Inc. as Settlement Administrator.

3 **4. NOTICE:** The Court approves the form and substance of the proposed notice
4 attached to the Settlement Agreement as Exhibit 1. The form and method for notifying
5 Settlement Class Members of the Settlement and its terms and conditions satisfies the
6 requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e).

7 The Court finds that the Notice Procedure submitted by the Parties constitutes the
8 best notice practicable under the circumstances. As provided in the Settlement Agreement,
9 the Settlement Administrator **SHALL** provide notice to Settlement Class Members and
10 respond to class member inquiries.

11 Within fourteen (14) days of the date of this Preliminary Approval Order, Defendant
12 **SHALL** provide the Settlement Administrator with the Class Information and within
13 twenty-one (21) days of receiving the Information, the Settlement Administrator **SHALL**
14 disseminate the Notice in the form attached as Exhibit 1 and in the manner and form
15 provided in the Settlement Agreement.

16 **5. REQUESTS FOR EXCLUSION:** Requests for Exclusion from the Settlement
17 must be faxed or mailed to the Settlement Administrator and confirmed faxed or
18 postmarked no later than forty-five (45) calendar days from the initial mailing of the Class
19 Notice to the Settlement Class (“Response Deadline”). The Response Deadline to submit
20 a Request for Exclusion will be extended fifteen (15) calendar days for any Settlement
21 Class Member who is re-mailed a Class Notice by the Settlement Administrator in
22 accordance with the notice procedure described in the Settlement Agreement. If the
23 Response Deadline falls on a Saturday or Federal Holiday, the Response Deadline will be
24 extended to the next day which the U.S. Postal Service is open.

25 **6. OBJECTIONS:** Objections to Settlement must be signed by the Settlement Class
26 Member and state: (1) the full name of the Settlement Class Member; (2) the dates of
27 employment of the Settlement Class Member; (3) the last four digits of the Settlement Class
28 Member’s Social Security number and any Employee ID number; (4) the basis for the

1 objection; and (5) whether the Settlement Class Member intends to appear at the final
2 approval hearing. All papers in support of the objections must be sent as described in the
3 Settlement Agreement and Class Notice and postmarked no later than forty-five (45)
4 calendar days from the initial mailing of the Notice Packet to the Class (“Response
5 Deadline”). The Response Deadline to submit a Notice of Objection will be extended
6 fifteen (15) calendar days for any Settlement Class Member who is re-mailed a Class
7 Notice by the Settlement Administrator in accordance with the notice procedure described
8 in the Settlement Agreement. If the Response Deadline falls on a Saturday or Federal
9 Holiday, the Response Deadline will be extended to the next day which the U.S. Postal
10 Service is open.

11 **7. LEAVE TO FILE SECOND AMENDED COMPLAINT:** The Court approves
12 the Parties’ stipulation to file an amended complaint in *Johnson I* to consolidate the
13 allegations across the three actions. Plaintiffs’ **SHALL FILE** the proposed second
14 amended complaint attached as Exhibit B to the Declaration of Christina Lucio within
15 seven (7) days of the electronic docketing of this Order.

16 **8. FINAL APPROVAL HEARING:** The Court shall conduct a Final Approval
17 Hearing on August 20, 2020, at 1:30 p.m. at 221 W. Broadway, Courtroom 4D, 4th Floor,
18 San Diego, CA 92101, to consider:

- 19 a. the fairness, reasonableness, and adequacy of the proposed settlement;
- 20 b. Plaintiff’s request for the award of attorneys’ fees and costs;
- 21 c. the Class Representative enhancement;
- 22 d. dismissal with prejudice of *Loud and Johnson II*; and
- 23 e. the entry of final judgment in this action.

24 At the Final Approval Hearing, the Parties shall also be prepared to update the Court
25 on any new developments since the filing of the motion, including any untimely submitted
26 opt-outs, objections, and claims, or any other issues as the Court deems appropriate.

27 The date and time of the Final Approval Hearing shall be included in the Notice to
28 be mailed to all class members.

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1 **9. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT:**

2 No later than twenty-eight (28) days before the Final Approval Hearing, the Parties shall
3 file a Motion for Final Approval of Class Action Settlement. The Motion shall include and
4 address any objections received as of the filing date. In addition to the class certification
5 and settlement fairness factors, the motion shall address the number of putative Settlement
6 Class Members who have opted out and the corresponding number of claims.

7 **10. APPLICATION FOR ATTORNEYS’ FEES, COSTS, AND CLASS**
8 **REPRESENTATIVE GENERAL RELEASE PAYMENT:**

9 No later than twenty-eight
10 (28) days before the Final Approval Hearing, Class Counsel shall file an application for
11 attorneys’ fees, costs, and the class representative service awards. Class Counsel shall
12 provide documentation detailing the number of hours incurred by attorneys in litigating
13 this action, supported by detailed time records, as well as hourly compensation to which
14 those attorneys are reasonably entitled. Class Counsel should address the appropriateness
15 of any upward or downward departure in the lodestar calculation, or a departure from the
16 benchmark in a percentage-of-the-fund approach to awarding attorney fees. Class Counsel
17 should also address the factors detailed above regarding the Class Representatives General
18 Release Payments to justify any deviation from the Court’s preliminarily approved award.
19 Class Counsel should be prepared to address any questions the Court may have regarding
20 the application for fees at the Final Approval Hearing.

21 **11. MISCELLANEOUS PROVISIONS:** In the event the proposed settlement is not
22 consummated for any reason, the conditional class certification shall be of no further force
23 or effect. Should the settlement not become final, the fact that the Parties were willing to
24 stipulate to class certification as part of the settlement shall have no bearing on, nor be
25 admissible in connection with, the issue of whether a class should be certified in a non-
26 settlement context.

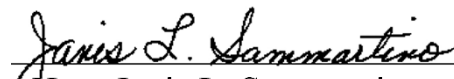
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12. **SCHEDULE:** The Court orders the following schedule for further proceedings:

EVENT	DATE
Defendant to Deliver Class List to Settlement Administrator	Within 14 days of the date of this Order
Settlement Administrator to Send Notice to Class Members	Within 21 days of receiving the Class List
Last Day for Class Members to File Request for Exclusion from Settlement	No later than 45 days from the date of mailing the Notice
Last Day for Class Members to File Objections to the Settlement	No later than 45 days from the date of mailing the Notice
Last Day for Class Members to File Notice of Intention to Appear at Final Approval Hearing	No later than 10 days before the Final Approval Hearing
Parties to File Motion for Final Approval	No later than 28 days before the Final Approval Hearing
Class Counsel to File Motion for Attorneys' Fees and Costs and Incentive Fees	No later than 28 days before the Final Approval Hearing
Final Approval Hearing	August 20, 2020 at 1:30 p.m.

IT IS SO ORDERED

Dated: April 21, 2020


 Hon. Janis L. Sammartino
 United States District Judge