

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LINDSAY SANTINI, on behalf of
herself and others similarly situated,

Plaintiff,

vs.

WELLS FARGO BANK, a National
Association with its principal place
of business in the State of
California,

Defendant.

CASE NO. 16-cv-01992-YGR

**~~PROPOSED~~ ORDER
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS,
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT, AND
SETTING HEARING FOR FINAL
APPROVAL**

Complaint filed: April 15, 2016
Trial Date: None set

1 On May 10, 2017, this Court, by and through Judge Yvonne Gonzalez
2 Rogers, considered Plaintiff's Motion for Order Conditionally Certifying a
3 Settlement Class, Preliminarily Approving the Class Action Settlement Agreement
4 and Release Between Plaintiff and Defendant ("Settlement" or "Agreement"),
5 Approving Notice of Class Action Settlement, and Setting the Final Approval
6 Hearing, and the papers submitted in support thereof. David Markham of The
7 Markham Law Firm appeared as Class Counsel for Plaintiff and the Class
8 Members. Glenn Biggs of Kading Briggs LLP appeared on behalf of Defendant
9 Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo").
10

11 Having considered the proposed Settlement as well as the documents
12 filed in support thereof, **IT IS HEREBY ORDERED THAT:**
13

- 14 1. This Order incorporates by reference the definitions in the Settlement and all
15 terms defined therein shall have the same meaning in this Order.
- 16 2. The Court finds that the Settlement Class, as defined in the Settlement, meets
17 all the requirements for class certification of a settlement class. The Court
18 hereby conditionally certifies the Settlement Class for settlement purposes
19 only. In the event the Final Judgment, this Order, or an Order Granting Final
20 Approval of the proposed Settlement is overturned, reversed, not affirmed in
21 its entirety or never becomes final, the Settlement Date does not occur or the
22 Settlement is nullified or invalidated for any reason, the fact that the Parties
23 were willing to stipulate to class certification for purposes of the Settlement
24 shall have no bearing on, nor be admissible in connection with, any issue in
25 this Action or in any other action.
- 26 3. Plaintiff Lindsay Santini is hereby appointed and designated, for all purposes,
27 as the Class Representative and the representative of the Settlement Class for
28 settlement purposes.

- 1 4. The following attorneys are hereby appointed and designated as counsel for
2 the Class Representative and the Settlement Class (“Class Counsel”):

3 Dave Markham, Esq.
4 Peg Reali, Esq.
5 Maggie Realin, Esq.
6 The Markham Law Firm
7 750 B Street, Suite 1950
8 San Diego, California 92101

9 Walter L. Haines, Esq.
10 UNITED EMPLOYEES LAW GROUP
11 5500 Bolsa Avenue, Suite 201
12 Huntington Beach, CA 92649

- 13 5. Class Counsel are authorized to act on behalf of the Class Representative and
14 the Settlement Class with respect to all acts or consents required by or which
15 may be given pursuant to the Settlement and such other acts reasonably
16 necessary to consummate the Settlement. The authority of Class Counsel
17 includes entering into any modifications or amendments to the Settlement on
18 behalf of the Class Representative and the Settlement Class which they deem
19 appropriate.
20 6. The Settlement appears to be proper and falls within the range of
21 reasonableness and appears to be presumptively valid subject only to
22 resolution of any valid objections that may be raised at the Final Approval
23 Hearing.
24 7. The Court preliminarily approves the terms of the Settlement, which is
25 attached as Exhibit “1” to the declaration of David R. Markham, filed
26 concurrently with Plaintiff’s unopposed motion for preliminary approval of
27 this Settlement, including a maximum, total settlement payment by
28 Defendant of \$685,000 (the “Gross Settlement Amount”) plus the employer’s
share of any payroll taxes related to the settlement payments. The Gross

Settlement Amount shall include the following:

- a. The service payment award in an amount not to exceed \$5,000 to the Class Representative;
- b. Class Counsel's attorneys' fees in an amount not to exceed \$171,250 in connection with their work in this Action;
- c. The costs in the amount not to exceed \$20,000 requested by Class Counsel in connection with their work in this Action;
- d. Administrative Expenses to be paid to the Administrator of approximately \$25,000.

8. Rust Consulting, Inc. is hereby appointed as Administrator and is hereby authorized to perform all of the duties, tasks and other activities set forth in the Settlement and the orders of the Court.

9. The Court orders that a Qualified Settlement Fund, as defined in Treasury Regulations Section 1.468B-1, or other applicable law, shall be established to effectuate the terms of the Settlement and the orders of the Court. The Court hereby finds and orders that the Qualified Settlement Fund:

- a. Shall be established pursuant to this order of the Court prior to the receipt of any monies from Defendant.
- b. That it shall be established to resolve and satisfy the contested Claims that have resulted, or may result, from the matters that are the subject of this Action and that are released pursuant to the Settlement.
- c. That the contested Claims have given rise to multiple claims by the Class Members asserting liability arising out of tort, breach of contract or other violations of law; and,
- d. That the fund or account be established and its assets be segregated (within a separately established fund or account) from the assets of Defendant, and all related other persons in the meaning of Title 26, United States Code, Sections 267(b) and 707(b)(1).

10. The Notice to be mailed to the Class Members, a copy of which is attached as Exhibit “A” to this Order.

The Notice shall be sent by the Administrator to each Class Member by first class mail as provided under the Settlement. The Administrator may format the Notice for mailing purposes.

11. The Class Period shall be April 15, 2012, to April 15, 2017.

12. The Court finds that the Settlement Class conditionally certified consists of the following group of individuals:

Individuals who, according to Wells Fargo’s personnel and payroll records, are or were employed by Wells Fargo in California as Phone Banker 1’s and/or Phone Banker 2’s at any time from April 15, 2012, through April 15, 2017.

The Settlement Class shall exclude any individual who has a pending civil complaint or administrative complaint that contains allegations that are also contained in this Action or who, to Wells Fargo’s knowledge, has retained counsel to represent him or her in connection with any wage-and-hour related claims and/or any individual who has previously signed an individual release that encompasses all claims contained in this Action.

13. The Court approves the filing of a First Amended Complaint in the Action by Plaintiff adding a collective action cause of action for violation of the Fair Labor Standards Act (“FLSA”) on behalf of the Opt-In Class.

14. The Court finds that the Opt-In Class conditionally certified consists of the following individuals: Class Members who cash their settlement checks, consenting to join this Action as a party plaintiff under 29 U.S.C. § 216(b)

and expressly releasing in writing any and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* that are or could be based on or related to the same matters alleged in the Complaint and/or First Amended Complaint. The members of the Opt-In Class are also Members of the Class.

15. The Court sets the following dates for purposes of this class action:


- a. **Class Data:** Defendants shall provide the class member information set forth in Paragraph 22 of the Settlement to the Administrator on or before **June 6, 2017**, which is 20 calendar days of the entry of the Preliminary Approval Order.
- b. **First Mailing of Notice to Class:** On or before **June 20, 2017**, which is 35 days after the entry of the Preliminary Approval Order.
- c. **Deadline to Opt-Out of Class:** The date by which Requests for Exclusion must be postmarked is **August 4, 2017**, which is 45-days after the mailing of the Notice to Class.
- d. **Objection Deadline:** The date by which all objections to the Settlement to be heard at the Final Approval Hearing must be postmarked is **August 4, 2017**, which is 45-days after the mailing of the Notice to Class.
- e. Deadline to file brief in Support of Counsel's Request for Approval of Attorney's Fees and Costs and Plaintiff's Service Award is **July 21, 2017**, which is fourteen days before Class Members' deadline to object to the Settlement expires.
- f. **Deadline to file brief in support of Final Approval of the Settlement:** **August 8, 2017**, which is 35 days before the Final Approval Hearing.
- g. **Deadline to file responses to any objections:** **August 8, 2017**, which is 35 days before the Final Approval Hearing.

h. **Final Approval Hearing: September 12, 2017 at 2:00 p.m.** in
Courtroom 1.

16. Neither this Order, the Settlement, nor any related statements or proceedings shall be construed or deemed an admission of liability, culpability, damage or wrongdoing on the part of Defendant, or of the appropriateness of certification of the Class other than for settlement purposes. If the Court does not finally approve the proposed Settlement that is the subject of this Order, all evidence, briefing, and proceedings related to the Settlement shall have no force and effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of the Settlement.
17. To the extent permitted by law, pending final determination as to whether the Settlement should be approved, the Court hereby orders that the Class Representative and all Settlement Class Members, whether directly, representatively, or in any other capacity, whether or not such persons have appeared in this litigation, shall not prosecute any claims or actions against Defendant or other Released Parties (as defined in the Settlement) in any forum, which would be covered by the release of claims as defined in the Settlement.
18. Pending further order of this Court, all proceedings in this action except those contemplated herein and in the Settlement are stayed.

IT IS SO ORDERED.

DATED: May 17, 2017



Judge Yvonne Gonzalez Rogers
United States District Court Judge

Exhibit A

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Santini v. Wells Fargo Bank, N.A.

Case No. 16-cv-01992-YGR

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or don't act.

TO: All persons who have been employed by Wells Fargo Bank, N.A. in California as a Phone Banker 1 and/or Phone Banker 2 at any time from April 15, 2012, through April 15, 2017. The period of time from April 15, 2012 until April 15, 2017 shall be referred to as the "Class Period."

You received this Notice because Defendant's records identify you as meeting the above description, which means you are a "Class Member." This means you are eligible to receive a proportional share of the proceeds of the proposed settlement as described in this Notice ("Settlement"). This Notice explains the terms of the Settlement and sets forth the procedures for receiving your share of the Settlement, or for objecting to or requesting exclusion from the Settlement.

The Court has not decided whether to finally approve the Settlement. Payments will be made only if and after the Court approves the Settlement and any appeals are resolved. Please be patient. If you are a Class Member, your options with respect to the Settlement are summarized in the following chart:

YOUR RIGHTS AND OPTIONS REGARDING THE SETTLEMENT	
A. Get a Settlement Payment.	If you are a Class Member (defined above), you will receive a proportionate share of the Settlement so long as you do not exclude yourself from this Settlement (Option C below). You do not need to submit a claim or take any affirmative steps in order to receive your share of the Settlement. It is estimated that you will receive approximately \$____. However, this amount may be higher based on the factors discussed below in Sections 12 and 13 of this Notice.
B. Object to the Settlement.	So long as you do not request to be excluded, you may object to the Settlement if you return your written objection in the manner set forth in Section 8 below, postmarked on or before August 4, 2017 .
C. Request to be Excluded.	You may request to be excluded from the Settlement in the manner set forth below in Section 9. Your request must be postmarked on or before August 4, 2017 to be effective. If you request exclusion from the Settlement, you cannot object to the Settlement, and you will not be eligible to receive your proportionate share of the Settlement.

PLEASE READ THIS NOTICE CAREFULLY**A. BASIC INFORMATION****1. What Is This Class Action About?**

On April 15, 2016, Plaintiff Lindsay Santini filed a Class Action Complaint in the United States District Court for the Northern District of California, which initiated Case No. 16-cv-01992-YGR (the "Action"). The Action is brought on behalf of all current and former employees who worked as Phone Banker 1's and/or Phone Banker 2's (collectively "Phone Bankers") for Wells Fargo in the State of California during the period beginning on

April 15, 2012, to the present. The Action alleges that Wells Fargo failed to pay for all wages earned, including overtime, failed to provide compliant meal periods and rest breaks, failed to timely pay all wages owed upon termination, failed to furnish accurate wage statements, and violated California Business & Professions Code Section 17200 *et seq.* As part of the Settlement of this Action and for purposes of this Settlement only, Plaintiff has added a cause of action to her Complaint for violation of the Fair Labor Standards Act (“FLSA”) for unpaid wages, including unpaid overtime, liquidated damages and other available remedies. The case is currently assigned to the Hon. Yvonne Gonzalez Rogers.

The parties engaged in settlement discussions, facilitated by an experienced mediator, which were ultimately successful. Plaintiff’s Counsel and Counsel for Defendant documented the Settlement, which was preliminarily approved by Judge Yvonne Gonzalez Rogers on May 16, 2017.

2. Why Did I Receive This Notice?

Defendant’s records indicate that you are or have been employed by Wells Fargo Bank, N.A. in California as a Phone Banker 1 and/or Phone Banker 2 during the time period from April 15, 2012, through April 15, 2017.

As long as you do not request to be excluded from this Settlement, you will be entitled to a proportionate share of the Net Settlement Amount (see Section 11 below), which will be distributed contingent upon final approval of the Settlement by the Court.

3. Who Are the Parties in This Action?

Lindsay Santini filed this action and has been appointed the Class Representative by the Court to act on behalf of all members of the Class.

The Defendant is Wells Fargo Bank, N.A.

4. What Is Defendant’s Position Regarding These Allegations?

Defendant has denied and continues to deny all of the allegations made by the Class Representative. Defendant contends that they have complied at all times with the California Labor Code, the California Business & Professions Code, and all similar federal and state laws. Defendant nevertheless agrees to the Settlement and encourages all eligible present and former employees to participate.

5. Has the Court Decided Who is Right?

No. The Court has not decided anything yet, only that you should get notice of the Settlement so that you can review the Settlement, and determine whether you want to participate in the Settlement, object to it, or exclude yourself from the Settlement.

6. Why Is This Class Action Being Settled?

After arm’s-length and good-faith settlement negotiations presided over by Jeffrey Ross, an experienced wage and hour mediator, the parties have reached a Settlement that, if approved by the Court, will resolve this class action rather than the parties having to proceed with the uncertainty and protracted expense of further litigation. Without a settlement, continued litigation would present further delay. Counsel for Plaintiff and Class Members believe the proposed Settlement is in the best interests of the Class.

B. YOUR RIGHTS AND OPTIONS

7. What Do I Need to Do to Get a Settlement Payment?

You do not need to submit a claim or take any affirmative steps in order to receive your share of the Settlement. You will automatically be paid your share of the Settlement if the Court gives the Settlement final approval. This process may take some time, so please be patient. However, it is important that you maintain current address and telephone information with the Administrator in order to help ensure receipt of your payment. You may contact Rust Consulting, Inc. (the “Administrator”) at the following address:

Santini v. Wells Fargo Bank, N.A. Class Action Settlement
c/o Rust Consulting, Inc.
[address]

Defendant is prohibited by law from retaliating against any employee who chooses to participate or chooses not to participate in this Settlement.

8. How Do I Object to the Settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Santini v. Wells Fargo Bank, N.A.*, Case Number 16-cv-01992-YGR), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before **August 4, 2017**. Any written objection should state each specific objection and any legal and factual support for each objection. The objection also must state the Class Member’s full name, address, and the dates of his/her employment at Defendant.

You cannot object to the Settlement **and** exclude yourself from the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement, including the Release of Claims outlined in Section 14.

Do NOT telephone the Court or the attorneys for Defendant.

9. May I Exclude Myself from the Class Action Settlement?

Yes. If you wish to exclude yourself from the Settlement, you must provide to the Administrator a timely, signed, dated and written request to be excluded.

The Request for Exclusion must include your full name (and former names, if any), current address, telephone number, signature, and the date of your signature. The Request for Exclusion must be returned by mail to the Administrator, postmarked on or before **August 4, 2017**, at the following address:

Santini v. Wells Fargo Bank, N.A. Class Action Settlement
c/o Rust Consulting, Inc.

[address]

Requests for Exclusion that are not timely submitted will be disregarded. If you request to be excluded from the Settlement, you will not receive any money from the Settlement, and you will not release any claims covered by the Settlement. No Class Member will be permitted to pursue a claim released by this Settlement on the grounds that a Request for Exclusion was submitted timely and lost, destroyed, misplaced or otherwise not received by the Administrator unless the Class Member has adequate proof that the Request for Exclusion was mailed timely certified and return receipt requested or has equivalent proof of timely delivery.

C. THE LAWYERS WHO REPRESENT YOU

10. Who Represents Me in This Class Action?

The Court has determined that David Markham of Markham Law Firm and Walter Haines of the United Employees Law Group (“Class Counsel”) is qualified to represent all members of the Class in the action and Settlement, and appointed them to do so. Class Counsel is experienced in handling similar wage and hour class action litigation. Their contact information is provided at the end of this Notice.

You do not have to pay Class Counsel’s fees and litigation expenses. However, you are responsible for the fees of any attorney you hire on your own. The fees and litigation expenses that the Court approves for Class Counsel will be paid by Defendant from the proposed Settlement.

D. THE TERMS OF THE SETTLEMENT

11. The Proposed Settlement and Net Settlement Amount

Without admitting any wrongdoing, Defendant has agreed to pay \$685,000 (the “Gross Settlement Amount”) plus the employer’s share of any payroll taxes related to the settlement payments to fully resolve this matter.

Class Counsel has litigated this case since its inception and has invested substantial time, effort and skill in this matter in order to obtain the results that have brought about this proposed Settlement. In order to receive their attorneys’ fees for this work and for achieving this result, Class Counsel intends to apply to the Court for a fee award of up to, but no more than, one-quarter of the Settlement Amount, or \$171,250, subject to Court approval.

Subject to Court approval, certain deductions will be made from the \$685,000 Gross Settlement Amount in order to account for (a) attorneys’ fees of Class Counsel up to \$171,250; (b) litigation expenses of Class Counsel up to \$20,000; (c) a Class Representative service payment award to Ms. Santini of up to \$5,000 for the initiation of the action, work performed, risks taken for the payment of attorneys’ fees and costs in the event this case had been lost, and in consideration for a general release of all of her claims against Defendant; and (d) approximately \$25,000 in settlement administration costs to the Administrator. After these deductions, and subject to Court approval, the remaining sum (*i.e.*, “Net Settlement Amount”) is estimated to be approximately \$463,750.

The Net Settlement Amount may vary if the Court does not approve the requested amount for fees, litigation expenses, Class Representative service payment award, or if the costs of administration are different than estimated. Any unapproved amounts will be added to the Net Settlement Amount.

12. What Will I Receive from the Proposed Settlement?

Your share of the Net Settlement Amount depends upon the number of weeks that you worked for Wells Fargo Bank, N.A. in California as a Phone Banker 1 and/or Phone Banker 2 during the time period from April 15,

2012, through April 15, 2017. It also depends on how many Class Members become Participating Class Members. The precise formula for distribution of the Net Settlement Amount to Class Members who do not timely submit a valid Request for Exclusion ("Participating Class Members") is as follows:

The Net Settlement Amount is to be divided among all Participating Class Members based on their pro-rata percentage of workweeks which is determined by dividing the number of weeks worked by the Participating Class Member in California as a Phone Banker 1 and/or Phone Banker 2 during the Class Period by the total number of weeks worked by all Participating Class Members in California as Phone Banker 1's and/or Phone Banker 2's during the Class Period, such that the Participating Class Members shall receive a dollar amount calculated by multiplying his or her percentage by the Net Settlement Amount.

Defendant's records show that you worked ____ weeks as a Phone Banker 1 and/or Phone Banker 2 in California during the Class Period.

The Settlement treats Settlement Payments to Participating Class Members as 50% wages for which an IRS Form W-2 will be issued and from which withholdings will be taken, and the remaining 50% as non-wages, for which IRS Forms 1099 will be issued, without withholdings or deductions taken. Settlement Payments made to Participating Class Members will not be subject to matching contributions or included as benefits-eligible earnings under any of Defendant's benefit plans, bonus programs, or compensation policies.

13. If I Want More Information About The Calculation of My Settlement Payment, What May I Do?

If you would like more information about the manner in which your share of the Net Settlement Amount is calculated, please contact the Administrator at (____) ____ - ____.

If you dispute the number of eligible workweeks used to calculate your share of the Net Settlement Amount (identified in Section 12 above), you must, on or before **August 4, 2017**, mail to the Administrator your statement setting forth (a) your job positions held during the Class Period; (b) the number of weeks you claim you worked in relevant job positions during the Class Period; and (c) the reasons you believe the basis for the calculation is incorrect. You must include any documentation supporting your position. If you do not dispute the number of eligible workweeks listed above, you do not need to do anything.

The Administrator will evaluate any information and/or documents you submit and, after reviewing Defendant's records, together with the Parties' counsel, will attempt to informally resolve any dispute. Unresolved disputes will be decided by the Administrator. The Administrator will notify you of any informal resolution or, if an informal resolution cannot be reached, its decision, in writing.

E. THE RELEASE OF CLAIMS

14. What Claims Will Be Released?

Unless you exclude yourself from this Settlement, you will release and will no longer be able to sue Defendant for certain claims, whether you were aware of them or not, for the time period from April 15, 2012, to April 15, 2017.

The full text of the Release set forth in the Class Action Settlement Agreement and Release Between Plaintiff and Defendant on file with the Court provides as follows:

Upon the Settlement Date, and except as to such rights or claims as may be created by this Agreement, each Participating Class Member fully releases and discharges Defendant, its present, former, and future parents, subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective past and present members, shareholders, directors, officers, employees, agents, servants, registered representatives, insurers and

attorneys (collectively hereafter, the “Released Parties”) from any and all claims, debts, liabilities, demands, obligations, guarantees, actions, or causes of action of whatever kind or nature, whether known or unknown, from April 15, 2012, through April 15, 2017, that were or could have been alleged based on the claims, facts and/or allegations contained in Plaintiff’s Complaint and/or First Amended Complaint (hereinafter, the “Released Claims”), including those arising out of or related to all claims based on failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay meal period and/or rest period premium compensation, waiting time penalties for failure to pay all wages due upon termination of employment, failure to provide accurate wage statements, and violation of California Business & Professions Code Section 17200 *et seq.* including all claims of any kind for minimum wages, regular wages, overtime wages, premium pay, liquidated damages, statutory penalties, civil penalties, restitution, interest, injunctive relief, punitive damages, other damages, costs, expenses and attorneys’ fees arising from the alleged violation of any provision of common law or statutory law which were or could have been raised as part of Plaintiff’s claims including but not limited to claims under California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*, and all provisions of the California Industrial Welfare Commission Wage Orders that provide the same or similar protection(s).

All settlement checks shall contain, on the back of the check, the following language, which shall be the opt-in consent required by the Fair Labor Standards Act: “By endorsing this check, I consent to join the Class in *Lindsay Santini v. Wells Fargo Bank, N.A.*, elect to participate in the Settlement and agree to release all of my claims that are covered by the Settlement, including under FLSA and state law.” Any Participating Class Member who cashes the check will be considered to have “opted-in” to the settlement of the FLSA claims and will become an FLSA Participating Class Member, such that in addition to waiving their state law claims, they will have also waived any claims available under the FLSA. If a Participating Class Member attempts to alter this language on the back of the check, any such alterations will be null and void and have no legal effect. The release language will be effective and controlling. Accordingly, Class Members who cash their settlement checks will expressly release in writing any and all claims under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*, that are or could be based on or related to the same matters alleged in the Complaint and/or First Amended Complaint.

In order to achieve a full and complete release of the Released Parties, the Class Representative and each Participating Class Member acknowledges that this release is also intended to include in its effect all such Released Claims whether or not the Class Representative and each Participating Class Member knows or suspects them to exist.

With respect to the Released Claims, Plaintiff and Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims and causes of action in this case which are the subject matter of the Released Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims and by virtue of this Agreement, Plaintiff and the Class Members shall be deemed to have, and by operation of the final judgment approved by the Court shall have, fully, finally, and forever settled and released all of the Released Claims as defined above.

If any Class Member initiates a new lawsuit against Defendant based on any claim released under this Agreement, and the Court invalidates the release, any recovery by the Class Member shall be offset by the amount, if any, paid to the Class Member in connection with this Settlement.

F. FINAL SETTLEMENT APPROVAL HEARING**15. When Will the Court Consider Whether to Finally Approve the Settlement?**

The Court will hold a hearing in Courtroom 1 of the United States District Court, Northern District of California, Oakland Courthouse, located at 1301 Clay Street, Oakland, CA 94612, on **September 12, 2017** at **2:00 p.m.** to decide whether to finally approve the Settlement as fair, reasonable, and adequate. At that time, the Court also will be asked to approve Class Counsel's request for attorneys' fees and reimbursement of litigation costs, the Class Representative service payment award, and the claims administration expenses.

It is not necessary for you to appear at this hearing, but you have a right to do so. If you have timely submitted an objection to the Settlement and you have also included a statement in that objection letter that you intend to appear, you may appear at the hearing to argue your objection to the Court, or have an attorney represent you at the hearing at your own expense, but ***only if*** you have returned an objection which states your intention to appear at the hearing to the Court, postmarked on or before **August 4, 2017**, in accordance with the instructions above in Section 8.

The hearing may be postponed without further notice to the Class. You are advised to check the settlement website or the Court's PACER site (see information in Section 16 below) to confirm that the date has not changed. If the Settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

G. FURTHER INFORMATION**16. How Do I Get More Information?**

This Notice provides a summary of the basic terms of the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Class Action Settlement Agreement and Release Between Plaintiff and Defendant available at www.settlement.com, by contacting Class Counsel (contact information provided below), by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, DEFENDANT, OR DEFENDANT'S ATTORNEYS TO INQUIRE ABOUT THE SETTLEMENT OR THE CLAIM PROCESS.

COUNSEL FOR PLAINTIFF AND THE CLASS:

David Markham, Esq.
Peg Reali, Esq.
Maggie Realin, Esq.
The Markham Law Firm
750 B Street, Suite 1950
San Diego, CA 92101
Telephone: (619) 399-3995

COUNSEL FOR DEFENDANT:

Theresa A. Kading, Esq.
Kading Briggs LLP
100 Spectrum Center Drive, Suite 800
Irvine, CA 92618
Telephone: (949) 450-8040

VERY IMPORTANT:

1. If you move to a different address, you must immediately notify the Administrator of your new address and contact information. It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your Settlement Payment.
2. **On receipt of your Settlement Payment check, YOU MUST CASH OR DEPOSIT IT WITHIN 90 DAYS. Do not delay. Checks not cashed or deposited before the expiration date (noted on the check), will be voided and the funds represented by those voided checks will be paid to the Unclaimed Property Fund of the State of California Controller's Office.**