

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RETIREE SUPPORT GROUP OF
CONTRA COSTA COUNTY,

Plaintiff,

v.

CONTRA COSTA COUNTY,

Defendant.

Case No. 12-cv-00944-JST

**ORDER GRANTING LEAVE TO FILE
THIRD AMENDED COMPLAINT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS, AND
PRELIMINARILY APPROVING
SETTLEMENT**

Re: ECF No. 137

Before the Court is Plaintiff’s Motion for Leave to File Third Amended Complaint, to Conditionally Certify Settlement Class, for Preliminary Approval of Settlement, for Approval of the Form and Method of Class Notice, for Appointment of Counsel for the Class, for Appointment of Settlement Administrator, and Setting a Date for the Final Approval Hearing. ECF No. 137.

The Court will grant the motion.

I. BACKGROUND

Plaintiff Retiree Support Group of Contra Costa County (“RSG”) brings this motion after extended settlement discussions with Defendant Contra Costa County (“the County”).

A. Factual Background

RSG is a non-profit organization that promotes and protects the welfare, benefits, and interests of retired employees of the County (“retirees”) and their dependents. Second Amended Complaint, ECF No. 43 (“SAC”) ¶¶ 3, 20. Some but not all of the retirees were represented by unions during their employment with the County. *Id.* ¶ 3.

RSG alleges that the County promised the retirees that they would receive retiree health care benefits for themselves and their dependents if they met certain criteria, and that the County would pay for 80% or more of the costs of these benefits for at least one plan for the lifetime of

1 the retirees (“the 80% promise”). Id. ¶ 1. In exchange for the 80% promise, the retirees “gave up
2 wage increases and other employment compensation and benefits,” such as cost of living
3 adjustments. Id. ¶¶ 1, 40.

4 RSG alleges that the 80% promise is contained in implied terms of several Memoranda of
5 Understanding (“MOU”) that were ratified through resolutions by the County’s Board of
6 Supervisors and in the resolutions themselves. In the complaint, RSG identifies several MOUs
7 and Board resolutions that allegedly contain the 80% promise; some of them pertain to employees
8 represented by unions and some pertain to unrepresented employees.

9 The ratified MOUs pertaining to represented employees contain express provisions stating
10 that retiring employees would be eligible to receive future medical benefits if they were enrolled
11 in one of the County’s health plans at the time they retired. Id. ¶¶ 16-21. The 80% promise is
12 allegedly contained in the implied terms of these MOUs. RSG alleges that the County’s intent to
13 create vested retiree health benefits in accordance with the 80% promise is shown by extrinsic
14 evidence, including the testimony of labor representatives and County officials who negotiated the
15 agreements containing the 80% promise, statements made by members of the Board of
16 Supervisors, and benefit materials and booklets. Id. ¶¶ 21-27.

17 The Board resolutions pertaining to unrepresented employees contain express provisions
18 stating that retirees would be able to retain their health benefits after entering retirement. Id. ¶¶
19 35-37. The 80% promise allegedly is contained in the implied terms of the resolutions. SAC ¶ 42.
20 RSG alleges that the County’s intent to create vested retiree health benefits per the 80% promise is
21 shown by the County’s practice of “mirror[ing] the retiree health benefits provided to
22 unrepresented management employees to the benefits negotiated by its represented employees,”
23 and by the same extrinsic evidence discussed above with respect to the represented employees. Id.
24 ¶¶ 36, 21-27.

25 RSG alleges that the County breached the 80% promise beginning on January 1, 2010,
26 when it capped its contribution to the retirees’ health benefits at a flat dollar amount. Id. ¶¶ 2, 43.
27 This increased the retirees’ share of the costs of their health benefits and shifted future cost
28 increases onto the retirees. Id.

1 RSG brings six claims against the County: (1) breach of contract, (2) impairment of
2 contract under the California Constitution, (3) impairment of contract under the United States
3 Constitution, (4) promissory estoppel, (5) due process violations under the California Constitution,
4 and (6) due process violations under the United States Constitution. RSG seeks injunctive and
5 declaratory relief that would require the County to fulfill its obligations under the 80% promise.
6 Id. ¶ 3.

7 **B. Procedural History**

8 Before this action was reassigned to this Court, District Judge White dismissed all of
9 RSG’s claims with leave to amend on the basis that each of the claims requires the existence of an
10 express or implied contract and that RSG failed to plead sufficient facts to establish the existence
11 of such a contract. He required that any amended complaint “allege all of the specific resolutions
12 or ordinances that contain the 80% Promise for each of Plaintiff’s members” or, if the 80%
13 promise is contained in implied terms, the amended complaint “should allege the language or
14 circumstances accompanying the passage of these ordinances and/or resolutions that clearly evince
15 an intent to create private rights of a contractual nature enforceable against the County.” ECF No.
16 32. Plaintiff filed its SAC on November 30, 2012. ECF No. 43. The Court denied a subsequent
17 motion to dismiss the SAC on May 8, 2013. ECF No. 70.

18 In early 2015, the case was referred to mediation. ECF No. 115. The parties participated
19 in two days of mediation in July and August of 2015 before the Honorable Ronald M. Sabraw.
20 ECF No. 137 at 13. Plaintiff filed this motion on March 17, 2016. Id. Defendant does not oppose
21 the motion.

22 **II. LEAVE TO AMEND**

23 Plaintiff first requests, as the parties have agreed, that it be granted leave to file a Third
24 Amended Complaint, which is attached as an exhibit to their proposed order. ECF No. 139-2
25 (“TAC”). The TAC seeks for the first time to add class allegations and adds several individual
26 plaintiffs to serve as class representatives. ECF No. 137 at 17; see also TAC ¶¶ 12-17, 53-62.

27 “[A] party may amend its pleading only with the opposing party’s written consent or the
28 court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P.

1 15(a)(2). Because the opposing party agrees that leave to amend should be granted, and because it
2 will facilitate the proposed settlement, the Court grants Plaintiffs’ motion for leave to file their
3 TAC.

4 **III. CLASS CERTIFICATION**

5 **A. Legal Standard**

6 Class certification under Rule 23 of the Federal Rules of Civil Procedure is a two-step
7 process. First, a plaintiff must demonstrate that the four requirements of Rule 23(a) are met:
8 numerosity, commonality, typicality, and adequacy. “Class certification is proper only if the trial
9 court has concluded, after a ‘rigorous analysis,’ that Rule 23(a) has been satisfied.” Wang v.
10 Chinese Daily News, Inc., 709 F.3d 829, 833 (9th Cir. 2013) (quoting Wal-Mart Stores, Inc. v.
11 Dukes, 131 S. Ct. 2541, 2551 (2011)).

12 Second, a plaintiff must establish that the action meets one of the bases for certification in
13 Rule 23(b). Here, because they rely on Rule 23(b)(3), Plaintiffs must establish that “questions of
14 law or fact common to class members predominate over any questions affecting only individual
15 members, and . . . [that] a class action is superior to other available methods for fairly and
16 efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

17 When determining whether to certify a class for settlement purposes, a court must pay
18 “heightened” attention to the requirements of Rule 23. Amchem Prods., Inc. v. Windsor, 521 U.S.
19 591, 620 (1997). Indeed, “[s]uch attention is of vital importance, for a court asked to certify a
20 settlement class will lack the opportunity, present when a case is litigated, to adjust the class,
21 informed by the proceedings as they unfold.” Id. (citations omitted).

22 Settlements that occur before formal class certification also require a higher standard of
23 fairness. In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir.2000). In reviewing such
24 settlements, in addition to considering the above factors, the court must also ensure that “the
25 settlement is not the product of collusion among the negotiating parties.” In re Bluetooth Headset
26 Prods. Liab. Litig., 654 F.3d 935, 946–47 (9th Cir.2011) (internal quotation marks and citations
27 omitted).

28 **B. Analysis**

1 Plaintiff seeks to certify the following class:

2 All eligible County retired employees receiving County retiree health benefits who
3 retired on or before December 31, 2015 except for Excluded Retirees as defined
4 below. The Class includes a) eligible retirees of Board of Supervisors governed
5 special districts who are in County Health Plans and do not receive health care
6 coverage under the Public Employees' Medical and Health Care Act, Government
Code § 22751, et. seq., ("PEMHCA") and b) eligible retirees from the Contra Costa
County Superior Court who were County employees at the time of retirement and
who are in County Health Plans and do not receive health care coverage under
PEMHCA.

7 Excluded from the class are any Retirees from the County who were represented at
8 the time they retired by the California Nurses Association ("CNA"), or by the
9 Physicians' and Dentists' Organization of Contra Costa ("PDOCC"), and the
Retirees from the County who are receiving health care coverage under PEMHCA
("Excluded Retirees").

10 ECF No. 137 at 20. Plaintiff states that the class consists of approximately 4,000 retired County
11 employees. Id. at 14. It further explains that retirees represented by CAN and PDOCC, or who
12 are receiving health care coverage under PEMHCA, are not included in the class "because the
13 County has either not reduced its contributions to their health care benefits, or did not reduce its
14 contributions at the same time and in the same manner as it did for Class Members." Id.

15 As explained further below, the Court grants the request to conditionally certify the class
16 for settlement purposes.

17 **1. Rule 23(a)(1): Numerosity**

18 Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is
19 impracticable." Fed. R. Civ. P. 23(a)(1). In addition, while not enumerated in Rule 23, "courts
20 have recognized that 'in order to maintain a class action, the class sought to be represented must
21 be adequately defined and clearly ascertainable.'" Vietnam Veterans of Am. v. C.I.A., 288 F.R.D.
22 192, 211 (N.D. Cal. 2012) (quoting DeBremaecker v. Short, 433 F.2d 733, 734 (5th Cir. 1970)).

23 Here, the parties allege there are approximately 4,000 class members. Joinder of this many
24 members would be impracticable. The parties have also concretely defined the members of the
25 class.

26 **2. Rule 23(a)(2): Commonality**

27 A Rule 23 class is certifiable only if "there are questions of law or fact common to the
28 class." Fed. R. Civ. P. 23(a)(2). For the purposes of Rule 23(a)(2), "even a single common

1 question” is sufficient. Wal-Mart, 131 S. Ct. at 2556 (quotations and internal alterations omitted).
2 The common contention, however, “must be of such a nature that it is capable of classwide
3 resolution—which means that determination of its truth or falsity will resolve an issue that is
4 central to the validity of each one of the claims in one stroke.” Id. at 2551.

5 Plaintiff identifies several commonly shared issues of law and fact, including whether the
6 County entered into the alleged MOUs with their employee labor organizations, whether those
7 MOUs promised to pay 80% of health care costs for retirees, whether that promise provided vested
8 lifetime rights to the County’s contributions, and whether the County subsequently breached those
9 rights by freezing their healthcare premium subsidies. ECF No. 137 at 21. These issues will be
10 central to the resolution of the case and are commonly shared by the class members,

11 **3. Rule 23(a)(3): Typicality**

12 In certifying a class, courts must find that “the claims or defenses of the representative
13 parties are typical of the claims or defenses of the class.” Fed R. Civ. P. 23(a)(3). “The purpose
14 of the typicality requirement is to assure that the interest of the named representative aligns with
15 the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). “The
16 test of typicality ‘is whether other members have the same or similar injury, whether the action is
17 based on conduct which is not unique to the named plaintiffs, and whether other class members
18 have been injured by the same course of conduct.’” Id. (quoting Schwartz v. Harp, 108 F.R.D.
19 279, 282 (C.D. Cal. 1985)).

20 The TAC adds several retirees as additional plaintiffs and proposed class representatives.
21 These plaintiffs are all retirees formerly employed by the County and receiving medical benefits
22 through County-sponsored health plans. TAC ¶¶ 12-17. In its motion, the Plaintiff contends that
23 their claims arise “from the same alleged events and course of conduct as the Class’s claims and
24 are based on the same legal theories—i.e. that the County breached a contract to pay lifetime
25 retiree medical benefits pursuant to the 80% Promise.” ECF No. 137 at 22. The Court concludes
26 the proposed class representatives’ interests are aligned with the interests of the class.

27 **4. Rule 23(a)(4): Adequacy**

28 “The adequacy of representation requirement . . . requires that two questions be addressed:

1 (a) do the named plaintiffs and their counsel have any conflicts of interest with other class
2 members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on
3 behalf of the class?” In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 462 (9th Cir. 2000).

4 No party has suggested, and the Court has not found, any evidence in the record suggesting
5 that any of the proposed class representatives have a conflict of interest with the other class
6 members. Plaintiff contends that the plaintiffs shares common claims with the class and seek the
7 same relief based on the same underlying allegations. ECF No. 137 at 22. Moreover, class
8 counsel has submitted a declaration identifying their specialized expertise in litigating pension and
9 employee benefit cases, their experience in representing these plaintiffs and similar plaintiffs in
10 other cases, and the firm resources available to represent the class. ECF No. 138 ¶¶ 3-11. The
11 Court concludes these contentions satisfy the adequacy requirement.

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

13 To certify a class under Rule 23(b)(3), the Court must find that “questions of law or fact
14 common to class members predominate over any questions affecting only individual members,
15 and . . . [that] a class action is superior to other available methods for fairly and efficiently
16 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The predominance inquiry “tests whether
17 proposed classes are sufficiently cohesive to warrant adjudication by representation.” Amchem
18 Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). ““When common questions present a
19 significant aspect of the case and they can be resolved for all members of the class in a single
20 adjudication, there is clear justification for handling the dispute on a representative rather than on
21 an individual basis.”” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1022 (9th Cir. 1998) (quotation
22 omitted).

23 As noted above, the central issues in this case are commonly shared by the members of the
24 class. These issues appear to predominate over any individual issues that might affect a particular
25 plaintiff or class member. Therefore, resolving these disputes in a single class action, or in this
26 case a single class settlement, would be more efficient than resolving them on an individual level.
27 The proposed class satisfies the requirements of Rule 23(b)(3).

28 Accordingly, the Court finds that the proposed class meets the requirements under Rule 23.

1 It therefore certifies the proposed class for settlement purposes, appoints the individual named
2 plaintiffs in the TAC as class representatives, and appoints Plaintiff’s counsel as class counsel.

3 **IV. PRELIMINARY APPROVAL**

4 **A. Legal Standard**

5 The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of class
6 actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Courts generally
7 employ a two-step process in evaluating a class action settlement. First, courts make a
8 “preliminary determination” concerning the merits of the settlement and, if the class action has
9 settled prior to class certification, the propriety of certifying the class. See Manual for Complex
10 Litigation, Fourth (“MCL, 4th”) § 21.632 (FJC 2004). “The initial decision to approve or reject a
11 settlement proposal is committed to the sound discretion of the trial judge.” City of Seattle, 955
12 F.2d at 1276.

13 The Court’s task at the preliminary approval stage is to determine whether the settlement
14 falls “within the range of possible approval.” In re Tableware Antitrust Litig., 484 F. Supp. 2d
15 1078, 1080 (N.D. Cal. 2007) (quotation omitted); see also MCL, 4th § 21.632 (explaining that
16 courts “must make a preliminary determination on the fairness, reasonableness, and adequacy of
17 the settlement terms and must direct the preparation of notice of the certification, proposed
18 settlement, and date of the final fairness hearing.”). Second, courts must hold a hearing pursuant
19 to Rule 23(e)(2) to make a final determination of whether the settlement is “fair, reasonable, and
20 adequate.”

21 Preliminary approval of a settlement is appropriate if “the proposed settlement appears to
22 be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does
23 not improperly grant preferential treatment to class representatives or segments of the class, and
24 falls within the range of possible approval.” In re Tableware, 484 F. Supp. 2d at 1079 (quotation
25 omitted). The proposed settlement need not be ideal, but it must be fair and free of collusion,
26 consistent with counsel’s fiduciary obligations to the class. Hanlon v. Chrysler Corp., 150 F.3d
27 1011, 1027 (9th Cir. 1998) (“Settlement is the offspring of compromise; the question we address is
28 not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate

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and free from collusion.”). To assess a settlement proposal, courts must balance a number of factors:

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 state 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.

Id. at 1026 (citations omitted). The proposed settlement must be “taken as a whole, rather than the individual component parts” in the examination for overall fairness. Id. Courts do not have the ability to “delete, modify, or substitute certain provisions”; the settlement “must stand or fall in its entirety.” Id.

B. Terms of the Settlement

The benefits of the proposed settlement are based on whether a particular class member is Medicare-eligible or non-Medicare-eligible. For non-Medicare-eligible members, the settlement calls for the County to provide them and their dependents with access to “the same health plans and plan providers as the County provides for active County employees at any given time.” ECF No. 137 at 14. The result of this, the Plaintiff argues, is that the retirees “will remain blended with active County employees for purposes of rate setting, and will have the same premiums, co-pays, and deductibles as active employees,” which is advantageous to retirees “because if premiums were set for them separately, their relatively advanced ages (compared to the age range of the group including them and actives) would result in higher premiums.” Id. at 14-15.

The settlement provides that the County will pay up to a “Maximum Fixed Monthly Premium” for these health plans, which it identifies by plan provider, plan, and tier in an exhibit attached to the settlement. ECF No. 139-1 at 33-40. Except as otherwise provided in the agreement, the monthly premium amount will remain fixed year-to-year. Plaintiff states that the Maximum Fixed Monthly Premium represents approximately 71.9% of the 2016 premiums for the least expensive plan offered by the County, or \$509.92 of \$709.06. ECF No. 137 at 24; ECF No. 138-3 at 34. In the event that the health plan premium for a particular plan year is less than the Maximum Fixed Monthly Premium, the County will pay 100% of the premium minus one cent.

1 ECF No. 137 at 15 n.6. The settlement also “provides that for some retirees where the County
2 froze the premium subsidy at a level higher than the current premium costs, the County will still
3 pay up to the Maximum Premium Subsidy stated in Exhibit 2 less \$0.01, as the premium cost for
4 those plans rises.” ECF No. 137 at 15. Dental coverage is also subsidized at rates set forth in the
5 same exhibit. ECF No. 138-3 at 41.

6 The County currently provides benefits through two “tiers” – either retiree only or retiree
7 plus one or more family members, and notes the possibility that the County would move to a three
8 tier system: retiree, retiree plus one dependent, and retiree plus two or more dependents. ECF No.
9 137 at 15. This would lead to increased premiums for the third, new tier, and the settlement
10 therefore provides for an additional \$150 per month subsidy. Id. at 16.

11 For Medicare-eligible members and their dependents, the County shall provide the same
12 access to its current health care providers, but only “to those providers’ Medicare supplemental
13 and Coordination of Benefits health plans offered by the County.” Id. at 16. As with non-
14 Medicare-eligible members, the County will contribute to those plans up to the Maximum Fixed
15 Premium Fixed Subsidy. Id. At present, this means that the premiums for many plans available to
16 Medicare-eligible members will be fully covered, minus one cent. Id. The settlement also
17 provides that the Maximum Fixed Premium Subsidy will increase by \$25 for Medicare-eligible
18 retirees on January 1, 2021. Id. Dental coverage is also subsidized. Id.

19 The benefits provided to non-Medicare-eligible members shall continue until those
20 members become Medicare-eligible. ECF No. 137 at 16. The benefits to Medicare-eligible
21 members shall continue for the lifetimes of those members. ECF No. 138-3 at 13.

22 The settlement does not provide for any subsidies of premiums to survivors of County
23 retirees upon the death of the retiree. Id. The Plaintiff states, however, that survivors will
24 continue to be eligible to participate in the County’s group plans at their own expense as long as
25 they maintain continuous enrollment. Id. at 17.

26 In exchange for these benefits, the class will release:

27 all claims that were alleged or could have been alleged in the Lawsuit by the
28 Releasing Parties, including without limitation, any and all claims, rights, demands,
charges, complaints, obligations, actions, debts, suits and causes of action, whether

1 known or unknown, suspected or unsuspected, accrued or unaccrued, for past or
2 future injuries or damages, including without limitation, injunctive, declaratory or
3 equitable relief, or monetary damages of any kind, including without limitation,
4 statutory, actual, compensatory, consequential, special, or punitive however
5 described, based on actions, representations, or omissions preceding Final
6 Approval of this Agreement arising out of or relating in any way to any of the legal,
7 factual, or other allegations made in the Lawsuit, or any legal theories that could
8 have been raised based on the allegations of the Lawsuit that relate in any way to
9 the health care provided by the County to the Releasing Parties under law, contract,
10 policy, practice, legislation or statute, including without limitation claims under
11 federal, state, or local constitutions, statutes, codes, regulations, or resolutions, any
12 claims that the County promised or guaranteed to pay a certain percentage of
13 subsidy for retiree health care, or to treat retirees the same as current County
14 employees with respect to health care subsidies, and any claims under any MOU,
15 contract, tort or common law of any kind, or otherwise.

16 ECF No. 138-3 at 17.

17 Class members are not required to submit claims forms, opt in, or take any other
18 affirmative action to participate in the settlement and receive benefits. Id. at 25. They will need to
19 provide a written and signed request to opt out of the settlement. Id. at 17. If more than 5% of the
20 class opts out, the County has the right to void the settlement agreement. Id.

21 Finally, the settlement contains no provision for attorneys' fees. Each of the parties shall
22 bear their own attorneys' fees and costs. Id. at 17. There is also no provision for service awards
23 to any named plaintiff. Id.

24 **C. Analysis**

25 Plaintiff's motion contends that the settlement agreement provides substantial benefits to
26 the class members and their dependents and contains no obvious deficiencies. ECF No. 137 at 24.
27 They note that the agreement was reached after extensive litigation, discovery, motion practice,
28 "two full days of arm's-length mediation before an experience neutral mediator, and lengthy
follow-up negotiations." ECF No. 137 at 24.

Plaintiff cites the difficulty in "adducing sufficient facts to support a claim for an implied
contract term creating a vested lifetime right to retiree medical benefits," as well as the extensive
cost and time of litigating the case, during which class members could be affected by the "well-
publicized historical rise in medical insurance premiums." Id. at 27. They contend that the
securing of subsidized lifetime benefits for both the retirees and their dependents is a substantial
economic benefit for the class members in light of the difficulties involved in litigation. Id. In

1 reference to the the extent of discovery completed and the state of the proceedings, Plaintiff notes
2 that the parties completed “extensive discovery and investigation,” and that “the degree to which
3 the parties understood and litigated their positions is highlighted by the fact that the case settled
4 only after two full days of mediation and significant subsequent negotiation.” Id. at 28. Finally,
5 in regards to the experience and views of counsel, Plaintiff states that class counsel, who are “very
6 experienced in class action litigation, particularly in employee benefits cases,” endorse the
7 settlement and recommend that it be approved. Id.

8 The Court concludes that the settlement should be preliminarily approved. An agreement
9 to provide 71.9% of the least expensive offered health plan is indeed of significant economic value
10 to the class members, especially when the alleged claim is that the County originally promised to
11 provide 80%. As Plaintiff explains, many retirees who are Medicare-eligible will continue to pay
12 just one cent towards their monthly premiums, and these benefits will last for the retirees’
13 lifetimes. The Court also takes note that no attorneys’ fees or class representative awards will be
14 apportioned from the economic benefits provided by the settlement. When compared with the
15 costs, time, and risks involved in litigation, this settlement is within the range of possible
16 approval.¹

17 The Court further concludes that the proposed notice procedure should be approved. The
18 proposed notice meets all requirements under Federal Rule of Civil Procedure 23(c)(2)(B), as it
19 clearly and concisely states (i) the nature of the action, see ECF No. 139-3 at 5; (ii) the definition
20 of the class certified, see id.; (iii) the class claims issues, or defenses, see id.; (iv) that a class
21 member may enter an appearance through an attorney if the member so desires, see id. at 3; (v)

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24 ¹ Because this settlement was reached prior to certification of the class, the Court must also
25 examine the settlement for evidence of collusion with a higher level of scrutiny. In re Bluetooth,
26 654 F.3d at 946. In conducting such an examination, courts must be “particularly vigilant not only
27 for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of
28 their own self-interests and that of certain class members to infect the negotiations.” Id. Signs of
collusion include, but are not limited to: (1) a disproportionate distribution of the settlement fund
to counsel; (2) negotiation of a “clear sailing provision”; and (3) an arrangement for funds not
awarded to revert to defendants rather than to be added to the settlement fund. Id. at 947. In the
present case, plaintiffs’ counsel are not seeking any compensation from the settlement, and the
settlement does not contain either a clear sailing provision or a reversionary clause. The
settlement therefore passes muster under the heightened scrutiny required by In re Bluetooth.

1 that the court will exclude from the class any members who requests exclusion, see id.; (vi) the
2 time and manner for requesting exclusion, see id. at 8; and (vii) the binding effects of a class
3 judgment on a class member, see id. at 9. The notice provides a website, telephone number, and
4 contact information for class counsel. Id. at 7, 10. The Court also approves the procedure for
5 distributing the class notice, as set forth below.

6 CONCLUSION

7 Plaintiff's motion is granted. Accordingly, the Court orders as follows:

- 8 1. Plaintiff is granted leave to file the TAC attached as an exhibit, ECF No. 139-2,
9 and shall do so within seven days of this order.
- 10 2. The following class is conditionally certified for settlement purposes under
11 Federal Rule of Civil Procedure 23:

12 All eligible County retired employees receiving County retiree health benefits who
13 retired on or before December 31, 2015 except for Excluded Retirees as defined
14 below. The Class includes a) eligible retirees of Board of Supervisors governed
15 special districts who are in County Health Plans and do not receive health care
16 coverage under the Public Employees' Medical and Health Care Act, Government
Code § 22751, et. seq., ("PEMHCA") and b) eligible retirees from the Contra Costa
County Superior Court who were County employees at the time of retirement and
who are in County Health Plans and do not receive health care coverage under
PEMHCA.

17 Excluded from the class are any Retirees from the County who were represented at
18 the time they retired by the California Nurses Association ("CNA"), or by the
Physicians' and Dentists' Organization of Contra Costa ("PDOCC"), and the
19 Retirees from the County who are receiving health care coverage under PEMHCA
("Excluded Retirees").

- 20 3. The individual plaintiffs named in the TAC, Michael Sloan, Deborah Elite,
21 Susanne Beadle, Billie Joe Wilson Elkin, Alyn Goldsmith, and Alice Grothmann,
22 are appointed as class representatives, and counsel for RSG is appointed as class
23 counsel.
- 24 4. The proposed settlement agreement, ECF No. 138-3, is preliminarily approved.
- 25 5. The proposed form and manner of the Class Notice, ECF No. 139-3, is
26 approved.
- 27 6. Simpluris is appointed as Settlement Administrator
- 28 7. The parties shall follow the following schedule:

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Event	Deadline
County will provide Settlement Administrator with contact information for the Class List	15 days after date of this order
Settlement Administrator mails class notices to Class List	10 days after receipt of Class List
Re-mailing of mail returned as undeliverable	7 days after undeliverable mail is returned
Deadline for class members to opt out or object	60 days after mailing of class notice
Plaintiff's Motion for Final Approval	September 22, 2016
Plaintiff's Reply Brief	October 13, 2016
Settlement Administrator's declaration of compliance with settlement agreement	October 13, 2016
Fairness Hearing	October 27, 2016 at 2:00 p.m.

IT IS SO ORDERED.

Dated: June 14, 2016



JON S. TIGAR
United States District Judge