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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JEFFREY LUM, et al.,  
Plaintiffs,  
v.  
SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL 521, et  
al.,  
Defendants.

Case No. 14-CV-05230-LHK

**ORDER GRANTING PROVISIONAL  
CLASS CERTIFICATION AND  
PRELIMINARY APPROVAL**

Re: Dkt. Nos. 52, 53

WHEREAS, a putative class action captioned *Lum, et al. v. Service Employees International Union Local 521, et al.*, Case No. 14-CV-05230-LHK is pending before the Court, and

WHEREAS, Jeffrey Lum and Andrew Li (collectively, “Plaintiffs”), individually and in their representative capacities on behalf of the Settlement Class, and Defendants Service Employees International Union Local 521 (“Local 521”), the County of Santa Clara (“the County”), and Alan Minato, in his official capacity as the Controller-Treasurer of the County, (all together, “Defendants”) have entered into a Settlement Agreement, ECF No. 53-1, which, with the exhibit attached thereto, sets forth the terms and conditions for a proposed settlement and

1 dismissal of Counts II and III of the First Amended Complaint with prejudice as to Defendants;

2 This matter coming before the Court upon the agreement of the Parties and the motion of  
3 Plaintiffs seeking provisional certification of the Settlement Class and preliminary approval of the  
4 Settlement Agreement, good cause being shown, and the Court being fully advised in the  
5 premises,

6 IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

7 1. Terms and phrases in this order shall have the same meaning as ascribed to them in the  
8 Settlement Agreement.

9 **Settlement Class Certification for Settlement Purposes Only**

10 2. A class (the "Settlement Class") is conditionally certified for settlement purposes only.

11 a. The Settlement Class is defined to include: "[A]ll nonmember Employees who,  
12 between December 1, 2012, and the date of final approval of this Agreement by the District Court,  
13 have timely and properly objected to paying non-chargeable fees to Local 521." "Employee" is  
14 defined as "a public sector employee who is represented in collective bargaining by Local 521."

15 b. The requirements for class certification under Fed. R. Civ. P. 23(a) are satisfied  
16 by the facts and evidence in this case as demonstrated in Plaintiffs' Motion to Certify the  
17 Settlement Class and Appoint Settlement Class Counsel and their supporting Memorandum of  
18 Points and Authorities. The Settlement Class consists of 3,959 members, there are questions of  
19 law or fact common to the Settlement Class, Plaintiffs' claims are typical of those of the  
20 Settlement Class, and Plaintiffs will fairly and adequately protect the interests of the Settlement  
21 Class.

22 c. In addition, Defendants have acted or refused to act on grounds that apply  
23 generally to the class, so that final injunctive relief is appropriate respecting the class as a whole.  
24 Further, the monetary relief appears incidental to the injunctive relief. The Ninth Circuit has  
25 explained that "in Rule 23(b)(2) cases, monetary damage requests are generally allowable only if  
26 they are merely incidental to the litigation." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 986  
27 (9th Cir. 2011). Although the U.S. Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*,

1 131 S. Ct. 2541 (2011), “called into doubt” the continuing viability of the “merely incidental”  
2 standard, the Ninth Circuit directed district courts that incidental monetary relief may be provided  
3 in Rule 23(b)(2) classes absent “individualized determinations of each employee’s eligibility for  
4 [monetary damages].” *See Ellis*, 657 F.3d at 986-87. The Second and Seventh Circuits have also  
5 concluded that, under certain circumstances, such incidental monetary relief is appropriate in Rule  
6 23(b)(2) cases after *Wal-Mart. Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364  
7 (7th Cir. 2012); *Amara v. CIGNA Corp.*, 775 F.3d 510, 519-20 (2d Cir. 2014).

8 Here, the calculation of the monetary relief—the interest paid on rebates for Fee Years  
9 2012-2015—appears to be “mechanical, formulaic, a task not for a trier of fact but for a computer  
10 program.” *See Johnson*, 702 F.3d at 372; *see also Amara*, 775 F.3d at 519-20 (concluding that  
11 monetary damages could be awarded for Rule 23(b)(2) class when the damages due each class  
12 member are “easily capable of computation by means of objective standards” (internal quotation  
13 marks omitted)). Thus, the calculation of monetary relief will not require individualized  
14 determinations by the Court. In fact, the monetary relief has been distributed. Additionally, the  
15 monetary relief appears incidental compared to the valuable prospective relief provided. Thus, the  
16 requirements for Fed. R. Civ. P. 23(b)(2) are satisfied.

17 3. If the Agreement does not become final for any reason, the fact that the Parties were  
18 willing to stipulate to class certification as part of the Agreement shall have no bearing on, and  
19 will not be admissible in connection with, the issue of whether a class for Counts II and III should  
20 be certified in a non-settlement context. The Court’s findings are for purposes of conditionally  
21 certifying a Settlement Class.

22 4. Plaintiffs Jeffrey Lum and Andrew Li are able to adequately and fairly represent and  
23 protect the interests of the Settlement Class and, as such, the Court hereby appoints said Plaintiffs  
24 as the Class Representatives for settlement purposes only.

25 5. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby appoints Nathan J. McGrath and  
26 Milton L. Chappell of the National Right to Work Legal Defense Foundation, Inc. as Class  
27 Counsel for settlement purposes only.

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**Preliminary Approval**

6. This Court finds that it has jurisdiction over the subject matter of this action and over all Parties to the Case, including all members of the Settlement Class.

7. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and in the best interests of the Settlement Class. The Court also finds that the Settlement Agreement (a) is the result of serious, informed, non-collusive arm’s length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of Mediator Suzanne Nusbaum; (b) is sufficient to warrant notice of the Settlement Agreement and the Final Approval Hearing to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23, and (d) is not a finding or admission of liability by Defendants.

**Notice**

8. The Court finds that the Notice, ECF No. 53-2, as amended by stipulation of the parties at the February 25, 2016 Preliminary Approval Hearing (“Amended Notice”) is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and their right to object to the Settlement or to exclude themselves from the Settlement Class. The Amended Notice is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

9. By April 18, 2016, the Amended Notice shall be mailed and emailed to all Settlement class members pursuant to Section 9(f) of the Settlement Agreement. Local 521 shall bear the costs of and facilitate said distribution of the Amended Notice. On the Settlement website described in Section 9(f), Class Counsel shall publish the following pertinent class documents: the Amended Complaint, the Settlement Agreement, the motion for settlement class certification and related documents, the motion for preliminary approval and related documents, the motion for attorney’s fees and costs and related documents, the Amended Notice, and relevant orders related to said documents.

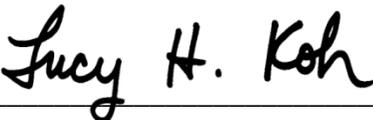


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16. No later than June 3, 2016, Plaintiffs shall file with the Court their motion for final approval, which shall be posted to the settlement website on the date of filing.

**IT IS SO ORDERED.**

Dated: February 25, 2016



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LUCY H. KOH  
United States District Judge