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Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTINE DAVID and RODNEY
CLURE, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

BANKERS LIFE AND CASUALTY
COMPANY, a foreign corporation,

Defendant.

No. 14-cv-00766-RSL

ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

This matter comes before the Court on the parties’ stipulated Motion for Preliminary Approval of a Class Action Settlement. The Court has considered the motion together with the supporting declaration and exhibits and the record on file with the Court. For the reasons set forth below, the Court GRANTS the motion and preliminarily approves of the parties’ class-wide settlement.

A. Standard of Review

A party seeking to certify a settlement class must establish that the requirements of Fed. R. Civ. P. 23 (“Rule 23”) are met. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). A court must engage in a “rigorous analysis” to determine whether the requirements

1 of Fed. R. Civ. P. 23 are satisfied. *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147,
2 161 (1982). However, the evidentiary showing need not be extensive. *Blackie v. Barrack*,
3 524 F. 2d 891, 901 (9th Cir. 1975).

4 In addition, the Court must satisfy itself that the proposed class-wide settlement is
5 fair, adequate, and reasonable to the class. Fed. R. Civ. P. 23(e); *see also Hanlon v. Chrysler*
6 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In conducting such analysis, federal courts
7 consider the following factors:

8 [T]he strength of the plaintiffs' case; the risk, expense, complexity,
9 and likely duration of further litigation; the risk of maintaining
10 class action status throughout the trial; the amount offered in
11 settlement; the extent of discovery completed and the stage of the
12 proceedings; the experience and views of counsel; the presence of
13 a governmental participant; and the reaction of the class members
14 to the proposed settlement.

15 *Hanlon*, 150 F.3d at 1026 (citing *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th
16 Cir. 1993)).

17 **B. The Proposed Settlement Class Satisfies Fed. R. Civ. P. 23**

18 To be certified under Rule 23, Plaintiffs and the proposed Settlement Class must
19 satisfy all the requirements of Rule 23(a): (1) the class is so numerous that joinder of all
20 members is impracticable (“numerosity”), (2) there are questions of law or fact common to
21 the class (“commonality”), (3) the claims or defenses of the representative parties are typical
22 of the claims or defenses of the class (“typicality”), and (4) the representative parties will
23 fairly and adequately protect the interests of the class (“adequacy”). In addition, the proposed
24 Settlement Class must satisfy the requirements of superiority and predominance under Rule
25 23(b)(3). Predominance is similar to the inquiry on commonality, but focuses on whether the
26 proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*

1 *Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). Superiority requires that a class action
2 be superior to other available methods for adjudication.

3 For the reasons set forth below, the Court certifies the following Settlement Class:

4 Agents assigned to the Bellevue Branch or one of its satellite
5 offices during the period June 22, 2008 to July 30, 2011 who had
6 twelve or fewer months' tenure during that period.

7 **1. Numerosity.**

8 Here, the Settlement Class's size is sufficiently numerous to meet the requirement of
9 numerosity. There are over 200 class members. As a general rule a potential class of 40
10 members is considered impractical to join. *See Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d
11 1546, 1553 (11th Cir. 1986).

12 **2. Commonality.**

13 Rule 23(a)(2) requires that the claims of the proposed class "depend upon a common
14 contention ... of such a nature that it is capable of classwide resolution." *Wal-Mart Stores,*
15 *Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The rule does not require that every question of law
16 or fact be common to every member, nor does it require that class members be identically
17 situated or have suffered the same degree of injury. *See id.*

18 Here, common legal and factual issues bind the Settlement Classes, namely whether
19 Bankers had a practice of treating new agents under Al Hawks' management as employees
20 rather than independent contractors. In prior briefing, Bankers did not dispute that common
21 evidence existed on most (4 of 6) of the relevant factors on the economic dependence test –
22 even as applied to a larger and more diverse class of agents. *See generally* Dkt. #21 (Def.
23 Mot. to Decertify); *see also* Dkt. #40 at 6-7 (June 30, 2015 Order) (summarizing Plaintiffs'
24 unanswered evidence on "most" factors). And, in its ruling denying certification over
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1 Plaintiffs’ proposed narrower class of “New Agents,” this Court acknowledged the “common
2 issues and common evidence across several factors of the economic-dependence test.” Dkt.
3 #76 at 7-8. A common legal and factual question also exists as to whether Bankers can rely
4 on the outside sales exemption to avoid overtime obligations even if the Agents were
5 misclassified. The Court therefore finds that the claims of the Settlement Class Members are
6 bound by sufficient common threads of fact and law to satisfy Rule 23(a)(2).
7

8 **3. Typicality.**

9 Typicality is satisfied if the claims or defenses of the representative parties are
10 “reasonably co-extensive” of the claims of absent class members. *Rodriguez v. Hayes*, 591
11 F.3d 1105, 1124 (9th Cir. 2010). This factor closely resembles that of commonality and
12 requires that the representative be “part of the class and ‘possess the same interest and suffer
13 the same injury’ as the class members.” *General Tel. Co. of the Southwest v. Falcon*, 457
14 U.S. 147, 156-57 (1982). Here, Plaintiffs challenge their classification and, as such, their
15 claims are typical of and co-extensive with those of the Settlement Class. And again, this
16 factor was not at issue in the Court’s prior ruling on class certification. *See generally*,
17 Dkt. #76.
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19 **4. Adequacy.**

20 The proposed Class Representatives and their counsel will fairly and adequately
21 protect the interests of the Settlement Class. Plaintiffs have no antagonistic or conflicting
22 interests with absent Settlement Class members and Class counsel are experienced in
23 employment litigation and class action practice.
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1 **5. Superiority and Predominance.**

2 Finally, on the elements of superiority and predominance, the Court is satisfied that
3 both requirements are met. While the Court expressed previous concerns over manageability
4 of this case if it were to proceed as a class action at trial, Dkt. #76, such concerns are no
5 longer present. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only
6 class certification, a district court need not inquire whether the case, if tried, would present
7 intractable management problems, *see* Fed. R. Civ. Pro. 23(b)(3)(D), for the proposal is that
8 there be no trial.”); *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004)
9 (“The class might be unmanageable if the case were actually tried yet manageable as a
10 settlement class because the settlement might eliminate all the thorny issues that the court
11 would have to resolve if the parties fought out the case.”). The parties’ proposed settlement
12 provides a superior method to address Bankers’ alleged violations of Washington wage laws
13 than individual claims. The Court has not been presented with any evidence that any class
14 members have ever instituted any other lawsuits on the issues raised in this case or shown
15 any interest in individual control of this litigation – even after decertification. As such,
16 rejecting the parties’ proposed settlement in this case would lead not to alternative methods
17 of adjudicating this dispute for other Agents, but to a denial of relief to them altogether. The
18 Court finds that the requirements of Rule 23(b)(3) are satisfied.
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21 **C. The Court Preliminarily Approves the Proposed Settlement as Fair and**
22 **Reasonable.**

23 Based on the Court’s review of the instant motion and the parties’ Settlement
24 Agreement (Exhibit 1 to the Declaration of Lindsay L. Halm) together with its knowledge of
25 the claims and defenses at issue in the case and the proceedings to date, the Court concludes
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1 that the terms of the parties' proposed settlement appear fair, reasonable, and adequate. To
2 that end, the Court ORDERS as follows:

3 1. The Court appoints Plaintiffs Christine David and Rodney Clure as Class
4 Representatives of the Settlement Class; and Adam J. Berger and Lindsay L. Halm of
5 Schroeter Goldmark & Bender as Class Counsel.

6 2. The Court approves the form and content of the parties' proposed notice to the
7 Settlement Class Members ("Notice") that is attached as Exhibit 2 to the Declaration of
8 Lindsay L. Halm.

9 3. The Court concludes that the manner of giving notice satisfies Rule 23 and the
10 requirements of due process and, consistent with the terms of the parties' Settlement
11 Agreement, the Court directs Defendant to mail a copy of the Notice to each Settlement Class
12 Member no later than thirty (30) calendar days following the date of this Order.

13 4. On September 19, 2019, at 1:30 p.m., the Court will conduct a hearing ("Final
14 Fairness Hearing") to determine whether to approve the settlement as fair, reasonable, and
15 adequate, which, if so approved, will result in a dismissal and final judgment. The Final
16 Fairness Hearing may, without further notice to the Settlement Class, be continued or
17 adjourned by order of this Court.

18 5. Settlement Class Members are not required to attend the Final Fairness
19 Hearing in order to be considered part of the Settlement Class, but may appear if they so
20 choose.

21 6. The Court approves notifying the Settlement Class of Plaintiffs' request for
22 \$370,000 in attorneys' fees and costs, subject to final approval at the Final Fairness Hearing.
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1 7. The Court approves notifying the Settlement Class of the proposed incentive
2 payments of \$10,000 each for the Class Representatives in recognition of their role in this
3 case and service to the Settlement Class, subject to final approval at the Final Fairness
4 Hearing.

5 8. The Court directs Class Counsel to submit a motion for final approval of the
6 settlement, along with a proposed order approving the settlement and awarding Class
7 Counsel's fees/costs and incentive payments for Class Representatives no later than fifteen
8 (15) calendar days prior to the date of the Final Fairness Hearing. Such papers shall also
9 inform the Court whether the mailing to Settlement Class Members was completed in
10 accordance with the requirements of this Order, and provide information concerning any opt-
11 outs or objections received as a result of such mailing.

12 9. Individuals who receive Notice of the settlement and wish to exclude
13 themselves ("opt out") from the Settlement Class must do so by following the instructions as
14 set forth in the Notice.

15 10. Settlement Class Members who do not "opt out" (and thus, remain in the
16 Settlement Class) may submit a written objection to any of the terms of the proposed
17 settlement, by following the instructions as set forth in the Notice. Only Settlement Class
18 Members who file a timely, written objection to the settlement will be permitted to appeal or
19 seek review of this Court's decision approving or rejecting the settlement.

20 11. In the event the parties' proposed settlement does not become effective in
21 accordance with the terms of the Settlement Agreement or is not finally approved by this
22 Court, the Court shall vacate this order, decertify the Settlement Class, and reinstate all
23 claims and defenses.
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IT IS SO ORDERED this 3rd day of June, 2019.



Robert S. Lasnik
United States District Judge

PRESENTED BY:

SCHROETER GOLDMARK & BENDER

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