Edward J. Wynne (SBN 165819)
ewynne@wynnelawfirm.com
J.E.B. Pickett (SBN 154294)
jebpickett@wynnelawfirm.com
WYNNE LAW FIRM
Wood Island
80 E. Sir Francis Drake Boulevard, Suite 3G
Larkspur, CA 94939
Telephone (415) 461-6400
Facsimile (415) 461-3900

Plaintiffs' Counsel

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MITRA ERAMI, MARIA MCGLYNN, BRITTANY SANCHEZ, individually and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

JPMORGAN CHASE BANK, National Association,

Defendant.

Case No.: 2:15-cv-07728-PSG-PLA

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: March 5, 2018
Time: 1:30 p.m.
Courtroom: 6A
Hon. Philip S. Gutierrez

NOTICE OF MOTION AND MOTION

TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT on March 5, 2018 at 1:30 p.m., or as soon thereafter as counsel may be heard, in the courtroom of the Hon. Philip S. Gutierrez, United States District Court for the Central District of California, located at 350 West 1st Street, 6th Floor, Los Angles, California, in Courtroom 6A, plaintiffs Mitra Erami, Maria McGlynn, and Brittany Sanchez will and hereby do respectfully move the court for preliminary approval of the proposed class action settlement. Specifically, Plaintiffs respectfully request that the Court (1) grant preliminary approval for the proposed class action settlement; (2) grant conditional certification of the proposed settlement class; (3) authorize the mailing of the proposed notice to the class of the settlement; and (4) schedule a "fairness hearing," i.e., a hearing on the final approval of the settlement.

Plaintiffs make this motion on the grounds that the proposed settlement is within the range of possible final approval, and notice should, therefore, be provided to the class. This Motion is based upon this Notice of Motion and Motion for Preliminary Approval of Class Action Settlement, the Memorandum of Points and Authorities in Support Thereof, the Declaration of Edward J. Wynne, Joint Stipulation of Class Action Settlement and Release any oral argument of counsel, the complete files and records in the above-captioned matter, and such additional matters as the Court may consider.

Dated: January 11, 2018

WYNNE LAW FIRM

/s/ *Edward J. Wynne*
Edward J. Wynne
Attorneys for Plaintiffs

TABLE OF CONTENTS

NOTICE OF MOTION AND MOTION i

INTRODUCTION 1

PROCEDURAL STATEMENT 2

STATEMENT OF FACTS 6

A. ABM Duties and Responsibilities 6

B. Change in the ABM position 7

C. Severance Agreements 8

D. Plaintiffs' Survey 8

E. Arbitration Agreements 9

SETTLEMENT TERMS 9

A. Settlement Fund 9

B. Class Definition 9

C. Class Representatives and Class Counsel 10

D. Notice Procedure 10

E. Plan of Allocation 10

1. Net Settlement Fund 10

2. Attorney's Fees, Costs and Enhancements 11

3. LWDA payment 11

CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT 11

A. The Class Meets the Requirements of Rule 23(a) 11

1. Numerosity 11

2. Commonality 11

a. Administrative Exemption 13

b. Executive Exemption 13

c. Combination Exemption 14

3. Typicality 15

4. Adequacy 16
B. The Class Meets the Requirements of Rule 23(b)(3) 16
THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED 17
A. The Standard for Preliminary Approval 17
B. Strength of Plaintiffs' Case 19
D. The Amount Offered In Settlement 22
E. Extent of Discovery Completed 23
F. Experience and View of Counsel 23
THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE 24
CONCLUSION 25

TABLE OF AUTHORITIES

Federal Cases

Amchem Products, Inc. v. Windsor,
521 U.S. 591 (1997) 16

Campbell v. PricewaterhouseCoopers, LLP,
287 F.R.D. 615 (E.D. Cal. 2012) 15

Casida v. Sears Holding Corp.,
2012 WL 3260423 (E.D. Cal. Aug. 8, 2012) 20

Churchill Village, LLC v. General Electric,
361 F.3d 566 (9th Cir. 2004) 24

Cuevas v. Citizens Financial Group, Inc.,
526 F. App'x 19 (2d Cir. 2013) 20

Gales v. Winco Foods,
2011 WL 3794887 (N.D. Cal. Aug. 26, 2011) 20

Gautreaux v. Pierce,
690 F.2d at 616 (7th Cir. 1982) 18

General Tel. Co. of Southwest v. Falcon,
457 U.S. 147 (1982) 15

Hammon v. Barry,
752 F. Supp. 1087 (DDC 1990) 23

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 12, 15, 17, 19

Henderson, et al. v. JPMorgan Chase Bank,
C.D. Cal. Case No. 2:11-cv-03428-PSG-PLA 20

Hightower v. JPMorgan Chase Bank, N.A.,
Case No. 11-cv-1802 (C.D. Cal. Jan. 28, 2014) 21, 22

Hwang v. JPMorgan Chase Bank, N.A.,
Case No. 11-cv-10782 (C.D. Cal. Aug. 16, 2012) 21

In re Armored Car Anti - Trust Litigation,
472 F. Supp. 1357 (ND GA 1979) 23

In re Autozone, Inc. Wage and Hour Employment Practices Litig.,
289 F.R.D. 526 (N.D. Cal. 2012) 12

In re General Motors Corp.,
55 F.3d 768 (3rd Cir.1995) 21

In re Traffic Executive Association-Eastern Railroads,
627 F.2d 631 (2d Cir. 1980)..... 18

Jimenez v. AllState Indem. Co.,
No. 07–14494, 2010 U.S. Dist. LEXIS 95993 2010 WL 3623176 (E.D.Mich. Sept. 15, 2010)..... 17

JPMorgan Chase Bank v. Jones,
No. 15-1176, 2016 WL 1182153 (W.D. Wash. Mar. 28, 2016)..... 21

Lerwill v. Inflight Motion Pictures, Inc.,
582 F.2d 507 (9th Cir. 1978)..... 16

Linney v. Cellular Alaska Partnership,
151 F.3d 1234 (9th Cir. 1998)..... 18

Miguel v. JPMorgan Chase Bank, N.A.,
2013 U.S. Dist. LEXIS 16865 (C.D. Cal. Feb. 5, 2013)..... 21

Musgraves v. Sears Holding Mgmt. Corp.,
2012 WL 3222905 (C.D. Cal. July 19, 2012)..... 20

Officers for Justice v. Civil Service Comm'n,
688 F.2d 615 (9th Cir. 1982)..... 18

Overton v. Hat World, Inc.,
2012 U.S. Dist. LEXIS 144116 (E.D. Cal. 2012)..... 24

Patel v. Nike Retail Servs., Inc.,
2016 WL 1241777 (N.D. Cal. Mar. 29, 2016)..... 20

Sommers v. Abraham Lincoln Federal Savings & Loan Association,
79 F.R.D. 571 (ED PA 1978)..... 23

Steinberg v. Carey,
470 F. Supp. 471 (NY 1979)..... 23

Stewart v. Abraham,
275 F.3d 220 (3d Cir. 2001)..... 11

Thompson v. JPMorgan Chase Bank,
C.D. Cal. Case No. SACV 14-01181-JLS (JPRx)..... 21

Torrisi v. Tucson Elec. Power Co.,
8 F.3d 1370 (9th Cir. 1993)..... 19

Villegas v. J.P. Morgan Chase & Co.,
No. CV 09-00261 SBA EMC, 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012) 11

Wal-Mart Stores, Inc. v. Dukes,
131 S. Ct. 2541 (2011) 12, 17

Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,
396 F.3d 96 (2nd Cir. 2005) 19

Walters v. Reno,
145 F.3d 1032 (9th Cir. 1998) 11

Wu v. Pearson Educ. Inc.,
277 F.R.D. 255 (S.D.N.Y.2011) 17

Zackaria v. Wal-Mart Stores, Inc.,
2015 WL 2412103 (C.D. Cal. May 18, 2015) 20

State Cases

Bello v. JPMorgan Chase Bank,
Case No. 37-2013-00075469-CU-WT-NC (San Diego Super. Ct. June 4, 2014) .. 21

Duran v. U.S. Bank Nat. Assn.,
59 Cal.4th 1 (2014) 17, 22

Harris v. Superior Court,
53 Cal. 4th 170 (2011) 13

Heyen v. Safeway Inc.,
216 Cal.App.4th 795 (2013) 12

Martinez v. Joe's Crab Shack Holdings,
231 Cal.App.4th 362 (2014) 17

Ramirez v. Yosemite Water Co.,
20 Cal.4th 785 (1999) 14, 16

Sav-on Drug Stores, Inc. v. Superior Court,
34 Cal. 4th 319 (2004) 13

Statutes, Rules & Regulations

29 Code of Federal Regulations
§ 514.202 13

29 Code of Federal Regulations
§ 514.203 13

29 Code of Federal Regulations
§ 514.204 13

29 Code of Federal Regulations
§ 541.201 13

29 Code of Federal Regulations
§ 541.205 13

29 Code of Federal Regulations
§ 541.205(b) (2000) 13

29 Code of Federal Regulations
§ 541.207 13

29 Code of Federal Regulations
§ 541.208 13

29 Code of Federal Regulations
§ 541.210 13

29 Code of Federal Regulations
§ 541.215 13

29 Code of Federal Regulations
§ 541.600 14

29 Code of Federal Regulations
§ 541.708 15

California Code of Regulations,
Title 8, § 11040 14

California Code of Regulations,
Title 8, § 11040 (3)(A) 14

California Code of Regulations,
Title 8, § 11040(1)(A) 14

California Code of Regulations,
Title 8, § 11040(1)(A)(1)(a)-(e) 14

California Code of Regulations,
Title 8, § 11040(1)(A)(2) 13

California Code of Regulations,
Title 8, § 11040(2)(N) 14

California Labor Code
§ 2699 (i) 11

California Labor Code
§ 510(a) 12

California Labor Code
§ 515(a) 12

Federal Rules of Civil Procedure
23 (a)(2) 11, 12

Federal Rules of Civil Procedure
23(a)(1) 11

Federal Rules of Civil Procedure
23(b)(3) 16, 17

Federal Rules of Civil Procedure
23(c)(2)(B) 24

Federal Rules of Civil Procedure
23(c)(3) 24

Federal Rules of Civil Procedure
23(e)(1) 24

Other Authorities

7A Wright, Miller & Kane, *Federal Practice & Procedure*
§ 1778 (2d ed. 1986) 16

DLSE opinion letter,
O.L. 2003.05.23 14

Herr, *Manual for Complex Litigation, Fourth*,
§ 21.632 (2004) 18

IWC Wage Order No. 4–2001 13

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs Mitra Erami, Maria McGlynn, and Brittany Sanchez ("Plaintiffs") seek preliminary approval of this $8,333,333.00 settlement between Plaintiffs and Defendant JPMorgan Chase Bank, N.A. ("Defendant" or "Chase"). The proposed settlement before this Court will dispose of this case.

This action was brought by Plaintiffs as a putative class action on behalf of themselves and all other employees that Chase employed as Assistant Branch Managers ("ABM") in California from February 25, 2011, through the present, and who Defendant classified as exempt from certain provisions of the California Labor Code. Plaintiffs' proposed Third Amended Complaint ("TAC") alleges that Defendant misclassified Plaintiffs and the putative class members as exempt from overtime compensation under both state and federal law and from the Labor Code's meal and rest break provisions in violation of California law.[1] Additionally, Plaintiffs allege a derivative claim that such misclassification resulted in violations of California Labor Code § 226 regarding accurate, itemized wage statements, as well as constituting an unfair business practice under California Business and Professions Code § 17200, *et seq*. Plaintiffs also seek civil penalties for the Labor Code violations alleged in the proposed TAC on behalf of themselves and other allegedly aggrieved employees under Labor Code § 2699 *et seq*., the Labor Code Private Attorneys General Act ("PAGA").

Plaintiffs submit that the proposed settlement is fair, reasonable and adequate and that the standards for certification of the proposed class in the context of a settlement are satisfied.

1 On December 11, 2017, the parties filed a stipulation and proposed order seeking permission for Plaintiffs to file a Third Amended Complaint. (Dkt. 80) As of this writing, the Court has not ruled on the parties' request.

PROCEDURAL STATEMENT

On February 25, 2015, Plaintiff Mitra Erami filed the instant action against Chase in the Superior Court of California, Solano County, as a class action brought on behalf of exempt ABMs in California alleging misclassification under California law. (Dkt. 1-1, p. 4) On April 1, 2015, Chase removed the *Erami* action to the Eastern District of California. (Dkt. 1)

In April 2015, Plaintiff's counsel caused a Newsletter to be sent to every Chase branch in California advising ABMs that an action had been filed and apprising them of the allegations. (Decl. of Wynne) This mailing generated responses from ABMs who were interviewed and also sent questionnaires to gather further information about their experiences. (Decl. of Wynne) The interviews and questionnaire responses were subsequently turned into declarations. (Decl. of Wynne) Subsequent newsletters were also sent out which generated additional evidence. (Decl. of Wynne)

On May 7, 2015, Plaintiff filed a stipulation and proposed order to file a First Amended Complaint which added a PAGA cause of action. (Dkt. 7) Also on May 7, 2015, Plaintiff filed an unopposed motion to transfer this action to the Northern District based on the action having been erroneously filed in Solano County rather than Alameda County. (Dkt. 8) The stipulation was approved and Plaintiff filed the FAC on May 19, 2015. (Dkt. 10) On June 4, 2015, Plaintiff's motion to transfer was granted and the matter was transferred to the Northern District. (Dkt. 12)

On July 7, 2015, Defendant filed a motion to transfer venue to the Central District of California which Plaintiff opposed. (Dkt. 18) The basis of Defendant's motion was because the then pending consolidated action, *Hightower et al. v. JPMorgan Chase Bank, N.A.*, C.D. Cal. Case No. 11-CV-1802-PSG-PLAx. One of the consolidated actions, *Henry v. JPMorgan Chase*, C.D. Case 2:15-cv-03895, alleged a sub-class of ABMs. The motion was granted on September 28, 2015 (Dkt. 32) and the matter was subsequently transferred to this Court. (Dkt. 43)

Starting in October 2015, both sides propounded written discovery on each other. Plaintiff propounded interrogatories and requests for production on Defendant. In response to Plaintiff's requests, Defendant produced over 9,600 documents and over 17,000 ESI documents. (Decl. of Wynne)

On February 4, 2016, Plaintiff brought a motion to compel related to Defendant's responses to Plaintiff's discovery. (Dkt. 48 & 49) Plaintiff's motion was granted in part and denied part. (Dkt. 58) One of the issues in dispute concerned Plaintiff's access to class contact information. Defendant was ordered to provide Plaintiff with contact information for 200 of the approximately 2,000 putative class members. (*Id.* at p. 10)

Upon receipt of the class data, Plaintiff caused to be sent a questionnaire to putative class members and started the process of gathering declarations. (Decl. of Wynne) Plaintiff ultimately obtained 118 declarations from putative class members. (Decl. of Wynne) During the course of Plaintiff's investigation with putative class members, Plaintiff determined that Defendant had effectively eliminated the ABM position in many branches and in so doing gave its employees a choice of taking a lesser role with less pay or accepting a severance package with a release of claims. (Decl. of Wynne)

On February 25, 2016, Plaintiff noticed Defendant's deposition pursuant to Fed.R.Civ.P 30(b)(6).

On March 3, 2016, the parties filed their Joint Rule 26 Report. (Dkt. 59) In the Report, Defendant asserted that many putative class members had executed arbitration agreements with a class action waiver. (*Id.* at p. 3) Defendant also asserted that plaintiff Erami had no standing to bring the PAGA claim. (*Ibid.*) The parties also agreed to private mediation. (*Id.* at p. 7) Also, on March 3, 2016, the parties submitted a stipulation and proposed order granting Plaintiff leave to file a Second Amended Complaint which was granted on March 7, 2016. (Dkt. 62) Plaintiff's SAC added two additional plaintiffs to address Defendant's claim that

Erami did not have standing to assert the PAGA cause of action. (Dkt. 63)

On March 22, 2016, Plaintiffs served subpoenas related to arbitrations that Defendant had conducted. On March 25, 2016, Defendant served its objection to Plaintiffs' Notice of Taking Deposition of Defendant, whereupon the parties engaged in lengthy and protracted meet and confer sessions about the scope and timing of Defendant's deposition.

On April 11, 2016, the parties appeared for a scheduling conference where dates for the amendment of pleadings, filing motion for class certification and trial was set. (Dkt. 68) The parties were also given an ADR referral. (Dkt. 69)

On June 21, 2016, the parties filed a stipulation to continue the filing and hearing dates on class certification due to the parties' continued meet and confer efforts regarding Defendant's and Plaintiffs' depositions. (Dkt. 72)

On July 21, 2016, named plaintiffs Sanchez and McGlynn filed separate complaints against Chase with the National Labor Relations Board ("NLRB") alleging that the class action waiver in Chase's arbitration agreements violated Section 7 of the National Labor Relations Act, 29 U.S.C. § 151 *et seq*. Plaintiffs actively participated in the NLRB's prosecution of this claim by providing relevant documents and testimony. (Decl. of Wynne)

On August 4, 2016, the parties filed a second stipulation and request to continue the hearing and briefing schedule on class certification due to Defendant's production of documents. (Dkt. 74)

On September 16, 2016, the parties filed a stipulation and request to stay the action pending mediation which was granted. (Dkt. 77) The parties thereupon agreed to mediation before Mark Rudy. In preparation for mediation, Defendant provided Plaintiffs with key material facts regarding the number of putative class members, number of workweeks, average compensation, and number of former employees. (Decl. of Wynne) Also in preparation for mediation and class certification, Plaintiffs hired Jon Krosnick, Ph.D. to conduct a survey on the ABMs with respect to their

activities and hours. (Decl. of Wynne) With Plaintiffs' assistance, Dr. Krosnick conducted his survey in December 2016. (Decl. of Wynne)

On November 18, 2016, the Court issued an order closing the case pending the results of mediation and provided leave for any party to re-open the case at any time. (Dkt. 78) On January 18, 2017, the parties conducted mediation with Mark Rudy. (Decl. of Wynne) While no settlement was reached that day, the parties continued to negotiate. Specifically, in February 2017 Plaintiffs joined efforts with plaintiffs from two other consolidated cases pending in the Southern District of New York similarly alleging that ABMs had been misclassified under the FLSA and various state laws in an attempt to reach a global settlement: *Varghese v. JP Morgan Chase* and *Taylor et al. v. JP Morgan Chase*, USDC SD NY Consolidated Case No. 14 Civ. 1718 (PGG). Chase provided additional information related to the size of the respective cases in terms of workweeks, the number of workweeks covered by releases, and the number of workweeks covered by arbitration agreements. The data showed that of the approximate 240,000 workweeks covered by ABMs in California, 30% of those workweeks are covered by a release of claims and 56% of those workweeks were covered by an arbitration agreement. (Decl. of Wynne)

In May 2017, the three plaintiff cases reached an agreement with Chase to settle all cases for $25 million with the *Erami* case receiving $8,333,333 of that amount. (Decl. of Wynne) The *Erami* plaintiffs and Chase subsequently negotiated the essential terms of the settlement as memorialized in a Memorandum of Undernstanding executed on August 16, 2017. After receipt of the formal Settlement Agreement, the parties continued to negotiate the terms of the settlement.

As a part of the proposed settlement to include claims under the FLSA for California ABMs only, Plaintiffs agreed to amend their complaint to add this cause of action via stipulation filed December 11, 2017. (Dkt. 80) The parties also filed a Joint Application to reopen the case. (Dkt. 79)

STATEMENT OF FACTS

JPMorgan Chase Bank N.A. is the retail banking unit and wholly-owned subsidiary of JPMorgan Chase & Co. On September 25, 2008, JPMorgan Chase Bank N.A. acquired certain assets and liabilities of Washington Mutual Bank from the Federal Deposit Insurance Corporation after it was placed into receivership by the Office of Thrift Supervision. As a consequence, many former WAMU employees, including ABMs, became Chase employees.

A. ABM Duties and Responsibilities

Chase has employed ABMs who were classified as salaried exempt during the entire class period. These ABMs are paid a salary and are eligible to receive a bonus depending on branch performance. ABMs report to the Branch Manager, who is the most senior person assigned to the branch. ABMs are generally responsible for the teller-side of the branch operations. In a large branch, there can be two ABMs both reporting to the Branch Manager: the ABM-Sales and the ABM-Operations. In that instance, the ABM-Sales generally works with the Personal Bankers and the ABM-Operations generally works on the teller side.

Plaintiffs allege that the typical ABM spends a significant amount of time at a teller window primarily engaged in teller activities. Teller activities include, but are not limited to, performing deposits, withdrawals, account transfers, wire transfers, foreign currency exchanges, cashing checks, purchase of money orders and/or cashier's checks, change order requests, processing payments to credit cards, assisting with auto loans and mortgages, and cash advances. ABMs also perform other activities, including but not limited to, cash audits of teller drawers, handling customer service issues, counting and balancing the money in the vault, filling the ATMs with money, and greeting customers as they come into the bank. ABMs are also primarily responsible for completing tasks associated with the branch's Internal Control Self-Check (ICSC).

Defendant produced in discovery the total transactions that plaintiff Mitra

Erami was engaged in. Erami recorded 20,517 transactions in 465 days. Thus, she conducted 44.12 transactions per day on average. Plaintiffs alleges that this number may be on the low side because Erami also spent time on other tasks where she could not engage in transactions like, for instance, training time, attending meetings and attending conference calls. She performed both teller transaction and Personal Banker transactions like opening new accounts. Based on this transaction data, Plaintiffs estimate that Erami may have spent two to four hours day on average engaged in teller transactions. Such time would not include other activities such as sales, customer service, and routine paperwork.

Plaintiffs also contend that most of the time ABMs are scheduled to work, the Branch Manager is also working. Typically there is only one day a week when ABMs are working when the Branch Manager is not present.

Chase also has a designation for some ABMs assigned to larger volume branches. ABM-Sales are ABMs that focus on working with Personal Bankers on sales. Personal Bankers are retail branch-based employees who are primarily engaged in sales of checking and savings accounts, credit cards, and small loans. Plaintiffs allege that ABM-Sales spend the majority of their time conducting sales and service of the Bank's products for customers who came into the branch. Those sales duties include opening new accounts, servicing accounts, customer service, account maintenance, resolving customer service issues, and offering convenience services.

The last variant of the ABM position is the ABM-In-Store. There are relatively few of these types of ABMs as they are assigned to kiosk-style "branches" within large supermarkets. Because of their locations, the kiosks generally are staffed with fewer employees.

B. Change in the ABM position

In April 2012, Chase started discussing an ABM pilot program, which was rolled-out in June 2012 for a limited test period. The idea was that the ABM would

be assigned to two branches rather than one. Plaintiffs allege that by splitting the time, Chase thought that it could re-prioritize the ABMs' time *away* from teller transactions. In the pilot program, Chase stated that ABMs were to spend 50% of their time on operations and controls, 25% scheduling, 25% coaching, and minimal to no time running teller transactions. In conjunction with the two-branch pilot program, in mid- to late-2014, Chase rolled out the "Lead Teller-Operations Specialist (LTOS)." In the "new staffing models" which covered many branches, the ABM position was eliminated at particular locations. Chase divided up the ABM's duties in these branches between the Branch Manager and the LTOS. The former ABM duties going to the LTOS included: ICSC, participating in weekly calls, quarterly cash audits, and certain "Dashboard" items. The former ABM duties going to the Branch Manager included: coaching tellers, performance reviews, and branch scheduling.

C. Severance Agreements

When Chase rolled out the LTOS program, many ABMs were given the choice of becoming an hourly employee or taking a severance. ABMs who took the severance also had to sign a waiver releasing their claims.

D. Plaintiffs' Survey

Dr. Krosnick conducted a survey on the putative class members who Plaintiffs had contact with to determine overtime hours worked, percent of days a meal period was missed, and percent of time doing different tasks. Dr. Krosnick was provided a number of documents relevant to the case and prepared his survey. The survey was administered online and Dr. Krosnick interpreted the results as follows based on his categorization of tasks as either exempt or non-exempt:

- ABMs work on the average approximately 8.93 hours of overtime per week. This calculation has a margin of error of .90 hours (or 10.07%).
- ABMs did not get meal breaks approximately 60% of the time. This calculation has a 4.89% margin of error.

• 95% of ABMs spend a majority of their time engaged in non-exempt tasks with a margin of error of 3.38% with an average amount of time spent on non-exempt tasks of 77.66% with a 2.19% margin of error.

E. Arbitration Agreements

Chase employees sign Chase's arbitration agreement during the hiring process. Many legacy WAMU employees had signed a "Binding Arbitration Agreement" with WAMU. Erami was a legacy WAMU employee; however, Sanchez and McGlynn signed Chase Arbitration Agreements. The WAMU Arbitration Agreement does not contain a class action waiver while all three versions of the Chase Arbitration Agreements do.

SETTLEMENT TERMS

The details of the settlement are set forth in the Joint Stipulation of Class Action Settlement. (Ex. 1, Decl. of Wynne) A summary is set forth below:

A. Settlement Fund

In return for a release of claims, Defendant shall pay up to $8,333,333 as a part of a claims made settlement with at least 65% of the Net Settlement Fund paid to participating class members on a pro rata basis based on workweeks during the settlement period which extends from the beginning of the statutory coverage of this action through preliminary approval. The Net Settlement Fund is the amount gross settlement amount less deductions for attorneys' fees and costs, class representative enhancement awards, payment to the California Labor Workforce Development Agency, a reserve fund for disputed and late claims, employees' share of payroll taxes, and settlement administration fees and costs.

B. Class Definition

Subject to Court approval, the parties have stipulated to certification for settlement purposes only of the following class defined as any individual employed by Chase in an exempt ABM position in California including Assistant Branch Manager, Assistant Branch Manager – Ops, Assistant Branch Manager – Sales,

Assistant Branch Manager In-Store III, or Assistant Branch Manager In Store IV during the period from February 25, 2011 through preliminary approval and who does not timely opt-out of the Settlement Class. It is estimated that there are approximately 2,000 class members. (Dkt. No. 1, ¶ 15)

C. Class Representatives and Class Counsel

Subject to Court approval, the parties have stipulated that plaintiffs Mitra Erami, Maria McGlynn, and Brittany Sanchez be appointed class representatives. All Plaintiffs worked as ABMs for Chase in California during the class period. Also subject to Court approval, the parties have stipulated that Edward J. Wynne, Wynne Law Firm, be appointed class counsel.

D. Notice Procedure

Subject to Court approval, the parties have agreed on KCC as the Claims Administrator. After updating the database provided by Chase through the National Change of Address database, the Claims Administrator will mail the Notice and Claim Form to each class member including the URL of an interactive, password protected website. The interactive website will allow class members to complete and file a Claim Form online as well as view and download the Notice and Claim Form. Class members may also submit a claim form via regular mail. The Settlement Administrator will also send out a reminder card halfway through the claims period to any class member who has not submitted a claim reminding them of the deadline. The Claims Administrator will also have live telephone support for any class member requests or inquiries. The cost of the notice and claims procedure is estimated to be $26,500. (Ex. 2, Decl. of Wynne)

E. Plan of Allocation

1. Net Settlement Fund: The Net Settlement Fund is estimated to be $5,335,000. Payments to individual Class Members shall be calculated and apportioned from the Net Settlement Amount based on the amount of workweeks during the settlement class period. Additionally, the parties have agreed on a reserve

fund of $50,000 to cover any untimely, disputed or self-identified claims.

2. Attorney's Fees, Costs and Enhancements: Pursuant to the parties' agreement, Plaintiffs' counsel will be asking the Court to award 33% of the settlement fund or $2,777,777 for fees in addition to actual litigation costs of up to $55,000. In addition, the named Plaintiffs will be asking for $5,000 each for enhancements which is an amount that is considered presumptively reasonable. *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390 at *7 (N.D. Cal. Nov. 21, 2012).

3. LWDA payment: The parties have agreed that the value of the PAGA claim is $100,000. Accordingly, 75% or $75,000, will be paid to the LWDA per Labor Code § 2699 (i) to settle this claim.

CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT

A. The Class Meets the Requirements of Rule 23(a)

The proposed settlement class meets the requirements for certification under Fed.R.Civ.P. 23. A court should certify a class if the following prerequisites are met: "(1) the class is too numerous, making joinder of the parties impracticable; (2) common questions of law or fact exist among the class members; (3) the claims of the class representatives are typical of the claims of the class; and (4) the class representatives will adequately represent the interest of the class." *Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998). Each of these requirements is met in this case.

1. Numerosity

Fed.R.Civ.P.23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." In *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001), the court observed that if a class exceeds 40 members, the numerosity requirement is satisfied. Here, the class exceeds 2,000.

2. Commonality

To establish commonality, Plaintiffs must establish questions of fact or law common to the class. Fed.R.Civ.P. 23 (a)(2). In construing Rule 23(a)(2), the Ninth

Circuit has noted that the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The standard under Rule 23 (a)(2) is "permissive." *Ibid*. "[E]ven a single common question" may satisfy Rule 23 (a)(2). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

In this case, Plaintiffs' claims involve several common questions of fact and law. These questions include whether Defendant violated California law by:

- Failing to pay all overtime wages due;
- Failing to authorize and permit class members to take meal and rest breaks;
- Engaging in unfair, unlawful, and/or fraudulent business practices;
- Attempting to enforce an unlawful arbitration agreement; and,
- Attempting to enforce an unlawful release of claims.

On their face, these questions adequately demonstrate the existence of common issues of fact and theories of law as to the propriety of Chase's employment practices under California law. Plaintiffs' challenge to Chase's meal and rest period policies also present common questions that will likely generate common answers. *See Wal-Mart Stores, Inc.*, 131 S.Ct. at 2551; *In re Autozone, Inc. Wage and Hour Employment Practices Litig.*, 289 F.R.D. 526, 534 (N.D. Cal. 2012).

Chase classified all ABMs as exempt under the administrative, executive, and/or a "combination" of the two exemptions. "Under California law, employees are entitled to overtime pay for any work in excess of eight hours in one workday, or 40 hours in any one workweek, unless the employer affirmatively establishes that the employee qualifies for a statutory exemption." *Heyen v. Safeway Inc.*, 216 Cal.App.4th 795, 816 (2013); Lab. Code, §§ 510(a), 515(a). Labor Code § 515(a), authorizes the IWC to establish exemptions from the overtime pay requirement for "'executive, administrative, and professional employees ... primarily engaged in duties that meet the test of the exemption ... [who] customarily and regularly

exercise[ ] discretion and independent judgment in performing those duties....' " See *Sav-on Drug Stores, Inc. v. Sup. Ct.*, 34 Cal. 4th 319, 324 (2004).

a. Administrative Exemption

The administrative exemption applies to an employee: (a) ... [w]hose duties and responsibilities involve ... [t]he performance of office ... work directly related to management policies or general business operations of his/her employer or his employer's customers; and (b) Who customarily and regularly exercises discretion and independent judgment; and ... (d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; ... and (f) Who is primarily engaged in duties that meet the test of the exemption. Cal. Code Regs., tit. 8, § 11040(1)(A)(2).

Wage Order 4-2001 directs that whether work is exempt or nonexempt "shall be construed in the same manner as such terms are construed in the following regulations under the FLSA effective as of the date of the order: 29 C.F.R. §§ 541.201–205, 541.207–208, 541.210, and 541.215." Cal. Code Regs., tit. 8, § 11040(1)(A)(2)(f). "Work qualifies as 'directly related' if it satisfies two components. First, it must be *qualitatively* administrative. Second, *quantitatively*, it must be of substantial importance to the management or operations of the business." *Harris v. Sup. Ct.*, 53 Cal. 4th 170, 181 (2011) (orig. italics). Federal Regulations former part 541.205(b) (2000) discusses the qualitative requirement that the work must be administrative in nature. It explains that administrative operations include work done by "white collar" employees engaged in servicing a business. Such servicing may include, advising management, planning, negotiating, and representing the company. Federal Regulations former part 541.205(c) (2000) relates to the quantitative component that tests whether work is of "substantial importance" to management policy or general business operations. *See*, *Harris* at 182.

b. Executive Exemption

IWC Wage Order No. 4–2001, which governs Chase's business, is codified at

Cal. Code of Reg., title 8, § 11040. Wage Order No. 4-2001 requires employers to provide overtime pay to employees working more than eight hours in one day or 40 hours in one week (*id.*, subd. 3(A)) but exempts from this requirement "persons employed in ... [¶] ... executive ... capacities" (*id.*, subd. 1(A)). "A person employed in an executive capacity means any employee: [¶] ... [¶] (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and [¶] (b) Who customarily and regularly directs the work of two or more other employees therein; and [¶] (c) Who has the authority to hire or fire other employees ...; and [¶] (d) Who customarily and regularly exercises discretion and independent judgment; and [¶] (e) Who is primarily engaged in duties which meet the test of the exemption." *Id.*, subd. 1(A)(1)(a)-(e). The term "primarily" is defined in the wage order as "more than one-half of the employee's work time." *Id.*, subd. 2(N).

The executive exemption under California law is construed in accordance with specified sections of the C.F.R.s as of the date of the order. Tit. 8, C.C.R., § 11040 subd. 1(A)(1)(e). "Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement." *Id.*, subd. 1(A)(1)(e); see *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 802 (1999).

c. Combination Exemption

Defendant has also alleged a "combination" exemption. (Dkt. 67) The apparent basis for Defendant's claim that California permits this approach is based on DLSE opinion letter, O.L. 2003.05.23. The federal regulation cited in the DLSE opinion letter was 29 CFR § 541.600, a section that has been superseded and re-

numbered in the current federal regulations. The current version of the DLSE Enforcement Manual contains an addendum showing which federal regulations have been explicitly incorporated into the Wage Orders. Former 29 C.F.R. § 541.600 was not incorporated nor has the current re-numbered version, i.e., 29 C.F.R. § 541.708.

Accordingly, common contentions present themselves with respect to both the administrative and executive exemptions. For instance: (1) do the ABMs perform work directly related to the management policies or general operations of Chase or its customers; (2) do they customarily and regularly exercise discretion and independent judgment; (3) do they work under only general supervision; (4) are they in charge of a department or recognized subdivision; (5) do they direct the work of two or more employees; (6) do they have the ability to hire/fire; (7) are they primarily engaged in exempt work? Additionally, whether California law permits the combining of exemptions presents another common question. Because Plaintiffs have alleged that ABMs are primarily engaged in teller and/or sales-type activities, they satisfy their burden regarding this exemption. *See*, *Campbell v. PricewaterhouseCoopers, LLP*, 287 F.R.D. 615, 622 (E.D. Cal. 2012) (denying motion to decertify and finding commonality regarding administrative exemption).

3. Typicality

A class representative's claims are typical if they are "reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). All of the Plaintiffs were employed by Chase as ABMs, all were primarily engaged in teller and/or sales-type activities, and all customarily and regularly worked over 40 hours

in a week. (Decl. of Wynne) Typicality is therefore satisfied.

4. Adequacy

"[T]wo criteria for determining the adequacy of representation have been recognized. First, the named representatives must appear able to prosecute the action vigorously through qualified counsel, and second, the representatives must not have antagonistic or conflicting interests with the unnamed members of the class." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Plaintiffs have no interests that are antagonistic to those of the other class members because none have brought claims that are separate from the class claims. Also, Plaintiffs have retained counsel who is experienced in employment class actions. (Decl. of Wynne)

B. The Class Meets the Requirements of Rule 23(b)(3)

To certify a class under Fed. R. Civ. P. 23(b)(3), the Court must find that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." The predominance inquiry tests whether proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997). "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." 7A Wright, Miller & Kane, *Federal Practice & Procedure* § 1778 (2d ed. 1986).

Plaintiffs contend that the predominant common question presented in this case is whether Chase's expectation for its ABMs to be primarily engaged in exempt work was "realistic." This common question is sufficient to support certification under Rule 23(b)(3). A determination of whether an employee is exempt requires an examination into the realistic requirements of the job. *Ramirez*, at 802. Indeed, the "ultimate question is: what are 'the *realistic* requirements of the job?" *Duran v. U.S.*

Bank Nat. Assn., 59 Cal.4th 1, 52 (2014). "Once we have brought into focus the ultimate issue of 'the employer's realistic expectations' or 'the *realistic* requirements of the job' it is not difficult to contemplate that employees in a given job classification will often be either wholly exempt or wholly nonexempt, since a job classification often entails a common set of employer expectations or requirements for performance of the job." *Duran* at 53. Thus, the question of whether Defendant's expectation that ABMs would be primarily engaged in exempt work is realistic or not, is "by nature a common question eminently suited for class treatment." *Martinez v. Joe's Crab Shack Holdings*, 231 Cal.App.4th 362, 380 (2014).

Plaintiffs also submit that the questions of whether combining exemptions is permitted under California law and the legality of Defendant's arbitration clause and releases also present predominant common questions. Because the answers to those questions are purely legal in nature and therefore equally applicable to all class members, resolution of those questions are also apt to "drive the resolution of the litigation." *Wal-Mart*, at 2551. Indeed, while Plaintiffs submit that the preliminary question of whether there is a contract at all is sufficient for certification of the claim – especially in the context of a settlement – courts have found interpretation of contracts suitable for class treatment on a nationwide basis. *Wu v. Pearson Educ. Inc.*, 277 F.R.D. 255, 265 (S.D.N.Y.2011); *Jimenez v. AllState Indem. Co.*, 2010 WL 3623176 (E.D.Mich. Sept. 15, 2010).

The superiority prong under Rule 23(b)(3) involves a comparison of the potential alternative mechanisms for resolving the dispute. *Hanlon*, 150 F.3d at 1023. In this case, the only alternative to a class action would be thousands of individual actions. As a practical matter, if this case is not certified, none of the wages will ever be recovered. Accordingly, a class action is superior.

THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED

A. The Standard for Preliminary Approval

The "universal standard" in evaluating the fairness of a settlement is whether

the settlement is "fundamentally fair, adequate and reasonable." *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*

As the Ninth Circuit has recognized, "the very essence of a settlement is compromise." *Id.* at 624. "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Even if the amount of a proposed monetary settlement is a fraction of the potential recovery, that does not necessarily mean the settlement is inadequate. *Id.*

Court approval of a class action settlement is a two-step process. First, counsel submits the proposed terms of the settlement to the court, and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to doubt its fairness or other obvious deficiencies, the court directs that notice be given to the class and sets a final fairness hearing. Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004).

Preliminary approval should be granted if the proposed settlement falls "within the range of possible final approval." *Gautreaux v. Pierce*, 690 F.2d at 616, 621 n.3 (7th Cir. 1982). Preliminary approval is "a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *In re Traffic Executive Association-Eastern Railroads*, 627 F.2d 631, 634 (2d Cir. 1980).

A proposed settlement is presumed to be fair when: it is reached through

arm's-length negotiations; the putative class is represented by experienced counsel; and the parties have conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2nd Cir. 2005). Here, all of the factors giving rise to a presumption of fairness exist. The proposed settlement was the product of arm's-length, non-collusive negotiations, overseen by an experienced mediator; the class is represented by experienced counsel; and the parties have conducted sufficient discovery. (Decl. of Wynne) Thus, the settlement is presumed to be fair.

The Ninth Circuit has also suggested that district courts consider the following factors in evaluating the fairness of a class action settlement: the strength of the plaintiff's 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 v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The relative degree of importance to be attached to any particular factor depends upon the circumstances of each case. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). Here, the pertinent factors weigh in favor of granting preliminary approval.

B. Strength of Plaintiffs' Case

For both the administrative and executive exemptions, Defendant will argue that regardless of whether the Plaintiffs claim to have been engaged in non-exempt work most of the time, such activity was inconsistent with the realistic expectations of the position. While Plaintiffs contend that the realistic expectations are to be primarily engaged in non-exempt work, Defendant will point to various documents such as the job description, performance reviews, emails, and disciplinary notices to argue that the realistic expectation for ABMs was to be primarily engaged in exempt work. If such a determination was made, there is a possibility that Defendant could prevail. See, e.g., *Musgraves v. Sears Holding Mgmt. Corp.*, 2012 WL 3222905, at

*1-2 (C.D. Cal. July 19, 2012). In *Musgraves*, the court granted the employer's motion for summary judgment on the plaintiff's exempt status despite plaintiff's dispute that he spent the majority of his time engaged in non-exempt work. The court found that the employer's expectation that the plaintiff spent most of his time engaged in exempt work was realistic and entered judgment accordingly. *Id*. at *8.

In addition to the merits of the claim, there is also the question of class certification. Many courts have denied class action status in involving assistant manager positions due to the variations in how assistant managers spend their time. *See, e.g., Patel v. Nike Retail Servs., Inc.*, 2016 WL 1241777 (N.D. Cal. Mar. 29, 2016) (denying class certification of misclassification claims on behalf of retail assistant managers); *Zackaria v. Wal-Mart Stores, Inc*., 2015 WL 2412103, at *16 (C.D. Cal. May 18, 2015) (finding that plaintiffs could not satisfy predominance requirements in misclassification case despite evidence that assistant managers were "classifie[d] uniformly as exempt" and "overall job expectations [we]re roughly identical"); *Casida v. Sears Holding Corp*., 2012 WL 3260423 (E.D. Cal. Aug. 8, 2012) ("The [blanket exemption] policies at issue here do not tell the Court with any specificity how AMs actually spend their time."); *Gales v. Winco Foods*, 2011 WL 3794887, at *10 (N.D. Cal. Aug. 26, 2011) ("Although [WinCo's uniform classification of AMs as exempt] gives the Court a general sense of the AM job . . ., it does not tell the Court with the requisite specificity how AMs actually spend their time."); *see also Cuevas v. Citizens Financial Group, Inc.*, 526 F. App'x 19, 21 (2d Cir. 2013) (vacating lower court's decision to certify misclassification claims on behalf of assistant branch managers under New York law). In fact, this Court has denied certification of a case against this very Defendant involving tellers and lead tellers finding that too much variation amongst the class. *Henderson, et al. v. JPMorgan Chase Bank*, C.D. Cal. Case No. 2:11-cv-03428-PSG-PLA, Dkt. No. 116, Order Denying Class Certification, at 13 (Gutierrez, J.) ("[T]he Court is concerned about the manageability of a class of thousands of employees at hundreds of

branches with different job responsibilities depending on their title, location, assignment, and other factors.").

Another factor to take into consideration is the issue of Chase's arbitration agreements of which approximately 80% of the class has signed some version of. All ABMs hired by Chase after January 1, 2009 are subject to the Chase Binding Arbitration Agreement with a class and collective action waiver that repeatedly has been enforced by a number of courts, including this Court. *Bello v. JPMorgan Chase Bank*, Case No. 37-2013-00075469-CU-WT-NC (San Diego Sup. Ct. June 4, 2014); *Hightower v. JPMorgan Chase Bank, N.A.*, Case No. 11-cv-1802, Dkt. No. 140 (C.D. Cal. Jan. 28, 2014) (Gutierrez, J.); *Miguel v. JPMorgan Chase Bank, N.A.*, 2013 U.S. Dist. LEXIS 16865 (C.D. Cal. Feb. 5, 2013) (Gutierrez, J.); *Hwang v. JPMorgan Chase Bank, N.A.*, Case No. 11-cv-10782 (C.D. Cal. Aug. 16, 2012). In addition, a number of ABMs who began employment with WAMU before Chase acquired certain assets and certain liabilities of WAMU in September 2008 are subject to arbitration agreements requiring arbitration of their claims and that do not authorize class arbitration. Courts have also enforced this version of the WAMU agreement (which went into effect in February 2002) and former Chase employees in California have been compelled to arbitrate employment related claims under the agreement on an individual basis. *See Thompson v. JPMorgan Chase Bank*, C.D. Cal. Case No. SACV 14-01181-JLS (JPRx), Dkt. No. 22; *JPMorgan Chase Bank v. Jones*, No. 15-1176, 2016 WL 1182153 (W.D. Wash. Mar. 28, 2016).

C. The Risk, Expense, Complexity, And Likely Duration Of Further Litigation

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court must weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *In re General Motors Corp.*, 55 F.3d 768, 806 (3rd Cir.1995) ("The present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of

not prevailing, should be compared with the amount of the proposed settlement."); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal.1979).

This factor supports preliminary approval here. This Counsel's experience in *Duran v. U.S. Bank N.A.*, 59 Cal.4th 1 (2014) perhaps best exemplifies the risk, expense, complexity and duration of further litigation. Counsel herein was successful in obtaining certification for that case and subsequently prevailed at trial after eight years of litigation only to have the entire judgment and certification ultimately reversed by the California Supreme Court after an additional five years of litigation. (Decl. of Wynne) The case was remanded back to the Superior Court where class certification was denied. The matter is now in the Court of Appeal. (Decl. of Wynne) Even prevailing at the trial court is no guarantee of recovery especially against a large corporate defendant like Chase. In essence, the risk in continued litigation is extremely high. Thus, it is Counsel's informed opinion that benefits of this settlement outweigh the risk and that settlement at this juncture is in the best interests of the Class.

D. The Amount Offered In Settlement

The gross settlement amount is $8,333,333. The net settlement amount is approximately $5,335,000 and there are approximately 2,000 class members. On a simple head-count basis, the average net recovery per class member is approximately $2,670. Viewed from the perspective of a workweek basis, the net recovery amounts to $22.22 per workweek ($5,335,000 / 240,000) or over $4,600 for a class member who was employed as an ABM during the statutory coverage of the action. Putting this amount in perspective, this Court approved a settlement in the *Hightower* case which had an average recovery of $200 per class member. *Hightower v. JPMorgan Chase Bank*, C.D. Cal. Case No. 11-cv-01802-PSG (PLAx) (Gutierrez, J.) (Dkt. 214). Given all the risks of continued litigation as identified above, the amount offered in settlement is very reasonable.

E. Extent of Discovery Completed

Plaintiffs obtained discovery on Defendant's policies and procedures related to its expectations of the ABMs, compensation, training and evaluations, personnel and payroll files, branch operations and controls, scheduling and planning, and a wide variety of ESI discovery including check-lists, daily meetings and attendance logs, "competitions," coaching and counseling logs, and schedules. Plaintiffs obtained discovery through Defendant's interrogatory responses and responses to documents requests. Plaintiffs conducted informal discovery by sending out a newsletter to branch locations which prompted some ABMs to contact Plaintiffs' counsel. Through formal discovery, Plaintiffs also received the names and contact information for 200 class members which used to contact putative class members with. Together with the two sources of information, Plaintiffs were able to interview and obtain declarations from approximately 120 putative class members. Plaintiffs also conducted a survey of putative class members and inquired about their activities, meal periods, and hours worked. Plaintiffs also received informal discovery from Defendant both prior to and during the course of the mediation which allowed Plaintiffs to refine their calculations and estimates. Based on the evidence and counsel's experience, Plaintiffs were able to make an informed decision that settlement was in the best interests of the class. (Decl. of Wynne)

F. Experience and View of Counsel.

Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. *Hammon v. Barry*, 752 F. Supp. 1087 (DDC 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (NY 1979); *In re Armored Car Anti - Trust Litigation*, 472 F. Supp. 1357 (ND GA 1979); *Sommers v. Abraham Lincoln Federal Savings & Loan Association*, 79 F.R.D. 571 (ED PA 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly if they have

been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. In this case, Plaintiffs and the class are represented by competent and experienced counsel. Plaintiffs' counsel recommends the proposed settlement as fair, adequate and reasonable to the class members and in their best interests. (Decl. of Wynne)

THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE

Pursuant to Fed.R.Civ.P. 23 (e)(1), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Pursuant to Fed.R.Civ.P. 23(c)(2)(B), "[t]he notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Notice is satisfactory if it "generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward and be heard." *Churchill Village, LLC v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

The parties have agreed, subject to Court approval, to have the Settlement Administrator mail notice via first class mail, postage prepaid, to the last-known addresses of the class members as updated through the U.S. Postal Service's NCOA database. This method meets the requirements of due process. *Overton v. Hat World, Inc.*, 2012 U.S. Dist. LEXIS 144116 at *5 (E.D. Cal. 2012) (noting that individual notice to class members' last known address meets the requirements of due process). Returned mail with forwarding addresses will be re-mailed while returned mail without forwarding addresses will be skip traced to get an updated address and then re-mailed. The Settlement Administrator will also send out a reminder card halfway through the claims period to any class member who has not submitted a claim

reminding them of the deadline. Class members will then have the option of going to the interactive, password-protected website to submit their claim or return their claim forms via regular mail. Accordingly, the proposed notice plan complies with Rule 23 and due process.

CONCLUSION

In light of the forgoing, Plaintiffs respectfully request that the Court grant the motion for preliminary approval of the class action settlement and certify the proposed classes.

Dated: January 11, 2018

WYNNE LAW FIRM

/s/ *Edward J. Wynne*
Edward J. Wynne
Attorneys for Plaintiffs