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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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12 LARRY WALLACE, individually and on behalf
of himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 WELLS FARGO & CO. and WELLS FARGO
16 BANK, N.A.,

17 Defendants.
18

Case No. 17CV317775

**ORDER RE: MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

19 The above-entitled action came on for hearing on Wednesday, July 14, 2021, at 1:30 p.m.
20 in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and considered
21 the written submissions filed by the parties and issued a tentative ruling on Tuesday, July 13,
22 2021. No party contested the tentative ruling; therefore, the court orders that the tentative ruling
23 be adopted as the order of the court, as follows:

24 **I. INTRODUCTION**

25 This is a putative class action. According to the allegations of the Complaint, filed on
26 October 19, 2017, defendant Wells Fargo Bank, N.A. (“Wells Fargo”) promises its customers
27 who do not opt into Wells Fargo’s Overdraft Service that it will not authorize or charge overdraft
28 fees on non-recurring debit card transactions. (Complaint, ¶ 1.) However, Wells Fargo

1 authorizes and charges overdraft fees on Uber and Lyft and other one-time transactions that it
2 knows or should know are not recurring. (*Ibid.*) The Complaint sets forth the following causes
3 of action: (1) Declaratory Relief for Permanent Injunction; (2) Breach of Contract; (3) Violation
4 of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750; (4) Violation of the California
5 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200; and (5) Fraud Pursuant to California
6 Code of Civil Procedure Section 1281.2.

7 The parties have reached a settlement. Plaintiff Larry Wallace (“Plaintiff”) moves for
8 preliminary approval of the settlement.

9 **II. LEGAL STANDARD**

10 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
11 class was adequate, whether certification of the class was proper, and whether the attorney fee
12 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
13 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48
14 Cal.App.4th 1794.)

15 In determining whether a class settlement is fair, adequate and reasonable, the
16 trial court should consider relevant factors, such as “the strength of plaintiffs’
17 case, the risk, expense, complexity and likely duration of further litigation, the
18 risk of maintaining class action status through trial, the amount offered in
19 settlement, the extent of discovery completed and the stage of the proceedings, the
20 experience and views of counsel, the presence of a governmental participant, and
21 the reaction of the class members to the proposed settlement.”

22 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48
23 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com’n, etc.* (9th Cir. 1982) 688
24 F.2d 615, 624.)

25 “The list of factors is not exclusive and the court is free to engage in a balancing and
26 weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple*
27 *Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed
28 settlement agreement 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.” (*Ibid.*,

1 quoting *Dunk, supra*, 48 Cal.App.4th at p. 1801 and *Officers for Justice v. Civil Service Com'n,*
2 *etc., supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

3 The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However “a presumption of fairness exists where: (1) the settlement
5 is reached through arm’s-length bargaining; (2) investigation and discovery are
6 sufficient to allow counsel and the court to act intelligently; (3) counsel is
7 experienced in similar litigation; and (4) the percentage of objectors is small.”

8 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48
9 Cal.App.4th at p. 1802.)

10 **III. DISCUSSION**

11 **A. Provisions of the Settlement**

12 The case has been settled on behalf of the following class:

13 [A]ll present and former holders of Demand Deposit Accounts with Wells Fargo
14 who were not opted into Wells Fargo’s Debit Card Overdraft Service at the end of
15 a month in which they were charged an overdraft fee by Wells Fargo for a debit
16 card transaction with Uber or Lyft during the Class Period. Excluded from the
17 Class are the Judge presiding over this Action and the Court staff.

18 (Declaration of Hassan A. Zavareei in Support of Unopposed Motion for Preliminary Approval
19 of Class Action Settlement (“Zavareei Decl.”), Ex. 1 (“Settlement Agreement”), ¶ 2.04.)

20 According to the terms of settlement, defendant Wells Fargo Bank, N.A. (“Defendant”)
21 will pay a maximum non-reversionary amount of \$10,536,098. (Settlement Agreement, ¶¶ 2.33
22 and 5.03(d)(4).) Plaintiff asserts that the settlement payment includes attorney fees of
23 \$3,511,681, costs estimated to be \$19,271, a service award of \$10,000 for the class
24 representative, and settlement administration costs estimated to be \$267,763. (Plaintiff’s
25 Memorandum of Points and Authorities in Support of Unopposed Motion for Preliminary
26 Approval of Class Action Settlement, fn. 4.)

27 Checks will be mailed in two distributions. (Settlement Agreement, ¶ 5.03(d).) Funds
28 remaining after payments are made in the first distribution to satisfy service awards, fee and
expense awards, and administration expenses, as well as settlement shares, will be distributed
evenly to settlement class members who cashed the first check sent to them. (Settlement
Agreement, ¶ 5.03(d)(4).) Checks from the second distribution that are not cashed for 90 days

1 from the date of issuance will be distributed to Center for Responsible Lending. (Settlement
2 Agreement, ¶ 5.03(d)(4).)

3 **B. Fairness of the Settlement**

4 Plaintiff asserts that the settlement is fair and was reached through arm's-length
5 negotiations and mediation. Plaintiff states that the settlement represents slightly more than 50%
6 of the maximum potential recoverable damages.

7 Overall, the court finds that the settlement is fair. The settlement provides for some
8 recovery for each class member and eliminates the risk and expense of further litigation.

9 **C. Incentive Award, Fees, and Costs**

10 Plaintiff requests an incentive award of \$10,000.

11 The rationale for making enhancement or incentive awards to named plaintiffs is
12 that they should be compensated for the expense or risk they have incurred in
13 conferring a benefit on other members of the class. An incentive award is
14 appropriate if it is necessary to induce an individual to participate in the suit.
15 Criteria courts may consider in determining whether to make an incentive award
16 include: 1) the risk to the class representative in commencing suit, both financial
17 and otherwise; 2) the notoriety and personal difficulties encountered by the class
18 representative; 3) the amount of time and effort spent by the class representative;
19 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)
20 enjoyed by the class representative as a result of the litigation. These "incentive
21 awards" to class representatives must not be disproportionate to the amount of
22 time and energy expended in pursuit of the lawsuit.

23 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395, quotation marks,
24 brackets, ellipses, and citations omitted.)

25 Prior to the final approval hearing, the class representative shall submit a declaration
26 detailing his participation in the action. The court will make a determination at that time.

27 The court also has an independent right and responsibility to review the requested
28 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los
Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiff's counsel will
seek attorney fees of \$3,511,681 (approximately 1/3 of the total settlement fund). Plaintiff's
counsel shall submit lodestar information (including hourly rates and hours worked) prior to the
final approval hearing in this matter so the court can compare the lodestar information with the

1 requested fees. Plaintiff's counsel shall also submit evidence of actual costs incurred up to the
2 date of the final approval hearing.

3 **D. Conditional Certification of Class**

4 Plaintiff requests that the putative class be conditionally certified for purposes of the
5 settlement. Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an
6 order approving or denying certification of a provisional settlement class after [a] preliminary
7 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
8 class “when the question is one of a common or general interest, of many persons, or when the
9 parties are numerous, and it is impracticable to bring them all before the court” As
10 interpreted by the California Supreme Court, Section 382 requires: (1) an ascertainable class; and
11 (2) a well-defined community of interest among the class members. (*Sav-On Drug Stores, Inc. v.*
12 *Superior Court* (2004) 34 Cal.4th 319, 326.)

13 The “community-of-interest” requirement encompasses three factors: (1) predominant
14 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
15 (3) class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v.*
16 *Superior Court, supra*, 34 Cal.4th at p. 326.) “Other relevant considerations include the
17 probability that each class member will come forward ultimately to prove his or her separate
18 claim to a portion of the total recovery and whether the class approach would actually serve to
19 deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)
20 The plaintiff has the burden of establishing that class treatment will yield “substantial benefits”
21 to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d
22 381, 385.)

23 As explained by the California Supreme Court,

24 The certification question is essentially a procedural one that does not ask whether
25 an action is legally or factually meritorious. A trial court ruling on a certification
26 motion determines whether the issues which may be jointly tried, when compared
27 with those requiring separate adjudication, are so numerous or substantial that the
28 maintenance of a class action would be advantageous to the judicial process and
to the litigants.

1 (*Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 326, internal quotation
2 marks, ellipses, and citations omitted.)

3 Plaintiff states that the class is ascertainable because it is defined by objective common
4 characteristics. Class members can be identified because they purchased Uber and/or Lyft rides
5 during the class period, were not enrolled in Wells Fargo’s Debit Card Overdraft Service, and
6 were charged overdraft fees as a result of their Uber and/or Lyft transactions. There are common
7 questions regarding whether Defendant breached its contracts with class members by assessing
8 overdraft fees on one-time debit transactions and whether Defendant’s business practices
9 otherwise violate the UCL and the CLRA. No issue has been raised regarding the typicality or
10 adequacy of Plaintiff as class representative. In sum, the court finds that the proposed class
11 should be conditionally certified.

12 **E. Class Notice**

13 The content of a class notice is subject to court approval. “If the court has certified the
14 action as a class action, notice of the final approval hearing must be given to the class members
15 in the manner specified by the court.” (Cal. Rules of Court, rule 3.769(f).)

16 Notice will be provided by publication on a website in addition to a postcard notice and a
17 long form notice. The postcard and long form notices generally comply with the requirements
18 for class notice. (See Settlement Agreements, Ex. A and B.) They provide basic information
19 about the settlement, including the settlement terms, and procedures to object or request
20 exclusion.

21 However, the following language shall be added to the notices:

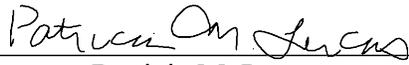
22 Class members may appear at the final fairness hearing either in person in the
23 courtroom or by telephone via CourtCall. Class members who wish to appear by
24 CourtCall should contact class counsel at least three days before the hearing if
possible, to arrange a telephonic appearance. Any CourtCall fees for an
appearance by an objecting class member will be paid by class counsel.

25 The amended notices shall be provided to the court for approval prior to mailing.
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1 **IV. CONCLUSION**

2 The motion for preliminary approval of the class action settlement is GRANTED, subject
3 to the modifications to the notices. The final approval hearing is set for November 17, 2021, at
4 1:30 p.m.

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6 Dated: July 14, 2021



Patricia M. Lucas
Judge of the Superior Court

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