

(35)

Tentative Ruling

Re: **Noemi Peraza Lopez v. Noble Credit Union/COMPLEX/CLASS ACTION**
Superior Court Case No. 24CECG00076

Hearing Date: August 22, 2024 (Dept. 502)

Motion: By Plaintiff Noemi Peraza Lopez for Preliminary Approval of Class
Action Settlement

Tentative Ruling:

To grant preliminary approval of the class action settlement.

Explanation:

1. Class Certification

a. Standards

First, the court must determine whether the proposed class meets the requirements for certification before it can grant preliminary approval of the proposed settlement. An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93-95.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313, citing *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089, internal citations omitted.)

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, plaintiff Noemi Peraza Lopez ("Plaintiff") seeks to certify a class consisting of all individuals who sought a loan using a limited-term driver's license and were affected by policy practices that resulted in defendant Noble Credit Union ("Defendant") allegedly committing discriminatory acts in violation of the California Unruh Civil Rights

Act, from the period of January 5, 2022 through January 5, 2024. Plaintiff estimates that the class has 53 members. Therefore, it appears that the class is sufficiently numerous to warrant certification. Also, the class of all individuals who used a limited-term driver's license and were denied a loan on those grounds would be readily ascertainable. Therefore, the proposed class is sufficiently numerous and ascertainable to be certified for the purpose of settlement.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Fireside Bank v. Superior Court, supra*, 40 Cal.4th at p. 1089, citing *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

"The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502, internal citations omitted.) "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020.) "It is axiomatic that a putative representative cannot adequately protect the class if [his] interests are antagonistic to or in conflict with the objectives of those he purports to represent. (*Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at p. 470.)

Here, it appears that there are common questions of law and fact, as Defendant allegedly denied the putative class's individual applications based on the use of a limited-term driver's license. The named class representative also has the same claims as the other class members. It appears that Plaintiff will be able to adequately represent the class. Nothing in the evidence submitted suggests that Plaintiff has any conflicts that would make her unable to represent the class. Plaintiff also has experienced and qualified counsel for her and the rest of the class. There is also evidence to establish that class counsel are experienced and qualified to represent the class based on the declarations of counsel.

Therefore, the proposed class has a sufficient community of interests to be certified for the purpose of settlement.

d. Superiority of Class Certification

It also appears that certifying the class would be superior to any other available means of resolving the disputes between the parties. Absent class certification, the individuals would have to litigate their claims individually, which would result in wasted time and resources relitigating the same issues and presenting the same testimony and evidence. Class certification will allow the individual's claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Therefore, the proposed class's claims are sufficient superior to be certified for the purpose of settlement.

2. Settlement

a. Legal Standards

"[I]t is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. 'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.' The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129, internal citations omitted.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." (*Id.* at p. 130.)

b. Fairness and Reasonableness of the Settlement

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through 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.' The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, it does appear that the settlement is fair and reasonable. The gross settlement is \$159,000.00. The individuals will each receive \$3,000.00. The value of the claim reflects 75 percent of the maximum statutory damage, and came after the exchange of discovery and negotiations amongst the parties. Under the terms of the settlement, Defendant further agrees to review its policies in light of the facts of this case, and to train its staff accordingly.

In addition, class counsel are highly experienced in complex litigation, and provided information as to their assessments of the strength of Plaintiff's case, the risk, expense and complexity of the litigation, the risk of maintaining class action status, and the extent of discovery completed. Thus, class counsel's opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court finds that the proposed settlement amount is fair, adequate and reasonable.

c. Proposed Class Notice

The proposed notice appears to be adequate, as the class administrator will mail out notices to the class members based on the Defendant's records. The notices will

provide the class members with information regarding their time to opt out or object, the nature and amount of the settlement, the impact on class members if they do not opt out, and the service award to the named class representative. Therefore, the court finds that the proposed class notice is adequate.

3. Attorney's Fees and Costs

The parties have agreed not to seek attorney's fees or costs from the proposed settlement. (Saenz Decl., ¶ 19, and Ex. A, §§ 5(e), 11(d).)

4. Payment to Class Representative

Plaintiff seeks preliminary approval of a \$5,000 "service payment". Incentive payments to class representatives are routinely awarded in class action wage and hour settlements, and similar payments have been approved in other cases. Here, counsel submits certain statements, and only details the general terms the work Plaintiff did on the case. The court approves the proposed notice regarding a service award to Plaintiff. Plaintiff is directed to support her request for a service reward with the final approval motion.

5. Payment to Class Administrator

The parties have agreed not to seek costs of administration from the proposed settlement. (Saenz Decl., ¶ 19, and Ex. A, §§ 5(e), 11(d).) Plaintiff however does seek the appointment of RG2 Claims Administration, LLC ("RG2") to administer the settlement. While no bid was offered for review, the court finds that based on the evidence presented, RG2 is sufficiently qualified, and appoints RG2 as administrator. The court notes that the terms of the settlement suggest that the costs of administration are expected not to exceed \$10,000. (Saenz Decl., Ex. A, § 11(d)(iii). The class size here is 53, and the payout is fixed, requiring no complex calculations. Counsel is directed to submit a declaration from RG2 providing evidence of actual costs of providing service.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: _____

KCK
(Judge's initials)

on

8/22/24
(Date)

<p align="center">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Noemi Peraza Lopez vs. Noble Credit Union / COMPLEX / CLASS ACTION</p>	
<p align="center">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 24CECG00076</p>

I certify that I am not a party to this cause and that a true copy of the:

[Minute Order and Tentative Ruling, dated 8/22/24]

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 08/23/2024

Clerk, by _____



, Deputy

E. Gonzalez

<p>Luis L Lozada, JR Mexican American Legal Defense & Educational Fund 634 S. Spring Street, 11th Floor Los Angeles, CA 90014</p>
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<p>Stuart M. Richter Katten Muchin Rosenman LLP 2121 Avenue of the Stars, Suite 1100 Los Angeles, CA 90067</p>

Clerk's Certificate of Mailing Additional Address Page Attached