

**FILED**  
LOS ANGELES SUPERIOR COURT  
JUN 28 2017  
EXECUTIVE OFFICER/CLERK  
BY N. Navarro Deputy  
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

JOHN LEE, individually and on behalf of  
members of the general public similarly  
situated,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC., BLIZZARD  
ENTERTAINMENT, INC., and DOES 1  
through 50 inclusive,

Defendants.

Case No.: BC575665

**AMENDED ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

Dept.: 307  
Date: June 14, 2017  
Time: 8:30 a.m.

The Court having been made aware of an error in its order of June 14, 2017 issues this Amended Order. The Amended Order corrects page 10, line 13 to read "\$10,000" in place of "\$5,000" and corrects the date for Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds from January 7, 2018 to January 10, 2018 at 8:30 a.m

**I. BACKGROUND**

Plaintiff John Lee sues his former employer in this class action lawsuit for a variety of wage and hour claims. Plaintiff alleges that he was employed as a Senior Artist for Defendant, and that he and other similarly situated employees were improperly classified as exempt.

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1 (Complaint, ¶¶ 1, 13.) The operative pleading contains claims for overtime, meal and rest breaks,  
2 waiting time penalties, wage statement penalties, and PAGA penalties.

3 On February 2, 2017, the Court granted Plaintiff's motion for preliminary approval of the  
4 settlement of this class action. Now before the Court is Plaintiff's motion for final approval.

5 **II. DISCUSSION**

6 **A. SETTLEMENT CLASS DEFINITION**

7 The settlement class is defined as, "all current and former employees of Blizzard who  
8 were employed as exempt senior level artists in Blizzard's cinematics department at any time  
9 from March 16, 2011 to the preliminary approval date." (Settlement Agreement, ¶1.32)

10 **B. TERMS OF SETTLEMENT AGREEMENT**

11 The essential terms of the Settlement Agreement are as follows:

- 12
- 13 • The Maximum Settlement Amount is \$1,500,000, non-reversionary. (¶1.17)
    - 14 ○ If the number of workweeks exceeds 15,474 by more than 5%, Defendants will
    - 15 increase the Maximum by \$96.94 for each workweek beyond the threshold. (¶3.12)
    - 16 This provision was not triggered. The total number of workweeks is 16,202.48.
    - 17 (Declaration of Abel Morales, ¶13.)
  - 18 • The Net Settlement Amount (\$954,000) is the Maximum minus the following:
    - 19 ○ Up to \$500,000 for attorney fees (¶1.3);
    - 20 ○ Up to \$22,000 for attorney costs (¶1.4);
    - 21 ○ Up to \$15,000 for an enhancement award (¶1.7);
    - 22 ○ Up to \$6,500 for claims administration costs (¶1.30); and
    - 23 ○ \$2,500 (75% of \$3,333 PAGA penalty) to the LWDA (¶1.16, as amended).
    - 24
    - 25

- 1 • There is no claims process. Settlement Class Members who do not opt out will receive a  
2 payment. (§3.11)
- 3 • The Response Deadline (for opting out or objecting) is 30 days. (§1.28)
- 4     ○ If more than 5% opt out, Defendant may terminate the settlement. (§3.17)
- 5 • Each participating class member's settlement share will be based on his/her number of  
6 workweeks in relation to the aggregate number of workweeks during the class period.  
7 (§3.11)
- 8 • For tax purposes, payments to participating class members will be allocated 50% to  
9 wages and 50% to interest and penalties. (§3.10)
- 10 • Defendants will be separately responsible for any employer taxes for portions of the  
11 settlement proceeds that constitute wages. They will not be paid from the Maximum  
12 Settlement Amount (§3.2, as amended)
- 13 • Checks will be valid for 180 days from the date of issuance, and thereafter will escheat.  
14 (§3.10)
- 15 • As of the Effective Date, all class members who do not opt out will release the Released  
16 Parties from the Released Claims for the beginning of the Class Period through  
17 Preliminary Approval. (§3.1) Released Claims means any and all federal and California  
18 state law wage-and-hour claims, rights demands, liabilities and causes of action of every  
19 nature and description, whether known or unknown, arising during the period from or  
20 related to any and all claims that were asserted or could have been asserted with regard to  
21 the workweeks used to calculate the Workweek Value and based on the facts alleged in  
22 the Lawsuit, including, without limitation, statutory, constitutional, contractual, and/or  
23 common law claims for wages, reimbursements, damages, unpaid costs, penalties  
24  
25

1 (including penalties under the Private Attorneys General Act of 2004, as amended,  
2 California Labor Code section 2699 *et seq.*), liquidated damages, punitive damages,  
3 interest, attorneys' fees, litigation costs, restitution, or equitable relief. The Released  
4 Claims shall not include any claims, rights, demands, liabilities or causes of action of any  
5 nature or description for workweeks during the Class Period in which Settlement Class  
6 Members officially were assigned positions and titles outside of the cinematics  
7 department. Claims under the federal Fair Labor Standards Act, as amended, are release  
8 only by those Settlement Class Members who accept their Individual Settlement  
9 Payments and thereby are deemed to have consented to such release. (§1.25, as  
10 amended.)

11 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

12 **1. Standards for Final Fairness Determination**

13  
14 “Before final approval, the court must conduct an inquiry into the fairness of the  
15 proposed settlement.” CRC 3.769(g). “If the court approves the settlement agreement after the  
16 final approval hearing, the court must make and enter judgment. The judgment must include a  
17 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the  
18 judgment. The court may not enter an order dismissing the action at the same time as, or after,  
19 entry of judgment.” CRC 3.769(h).

20 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in  
21 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
22 action. The purpose of the requirement [of court review] is the protection of those class  
23 members, including the named plaintiffs, whose rights may not have been given due regard by  
24 the negotiating parties.” See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of  
25

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1 America (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); see also Wershba v.  
2 Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to “scrutinize the proposed  
3 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
4 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
5 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal  
6 quotation marks omitted).

7 “The burden is on the proponent of the settlement to show that it is fair and reasonable.  
8 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm's-  
9 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to  
10 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
11 objectors is small.’” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th  
12 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
13 rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,  
14 130. “Rather, to protect the interests of absent class members, the court must independently and  
15 objectively analyze the evidence and circumstances before it in order to determine whether the  
16 settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that  
17 determination, the court should consider factors such as “the strength of plaintiffs' case, the risk,  
18 expense, complexity and likely duration of further litigation, the risk of maintaining class action  
19 status through trial, the amount offered in settlement, the extent of discovery completed and  
20 stage of the proceedings, the experience and views of counsel, the presence of a governmental  
21 participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128.  
22 “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing  
23 of factors depending on the circumstances of each case.” Wershba at 245.  
24  
25

1 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order  
2 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.  
3 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it  
4 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement  
5 because ‘the public interest may indeed be served by a voluntary settlement in which each side  
6 gives ground in the interest of avoiding litigation.’” Id. at 250.

7 **2. Does a presumption of fairness exist?**

- 8 a. Was the settlement reached through arm’s-length bargaining? Yes. Settlement of  
9 this action resulted from a full day of mediation before David Rottman.  
10 (Declaration of J.E.B. Pickett, ¶16.)  
11 b. Were investigation and discovery sufficient to allow counsel and the court to act  
12 intelligently? Yes. The parties have conducted extensive investigation into the  
13 facts of this case. (Id. at ¶12.) Defendant produced documents (including  
14 employment policies, job duties, and correspondence relating to the allegations)  
15 and video clips, and Plaintiff took the deposition of Defendant’s person most  
16 knowledgeable. Defendant took Plaintiff’s deposition. Defendant provided class  
17 information that included salary and bonus data as well as dates of employment.  
18 (Id. at ¶¶ 13, 14, 17.)  
19 c. Is counsel experienced in similar litigation? Yes. (Id. at ¶¶ 24-30.)  
20 d. What percentage of the class has objected? The settlement administrator received  
21 no objections. (Morales Declaration, ¶10.)  
22

23 CONCLUSION: The settlement is entitled to a presumption of fairness.

24 **3. Is the settlement fair, adequate, and reasonable?**  
25

- 1 a. Strength of Plaintiffs' case. "The most important factor is the strength of the case for  
2 plaintiffs on the merits, balanced against the amount offered in settlement." See Kullar  
3 v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. Here, based on evidence  
4 obtained during discovery, Class Counsel has calculated that Defendants' damage  
5 exposure is approximately \$6,500,000, not counting attorney's fees. (Pickett  
6 Declaration, ¶18.) While Plaintiff believes that he has a good chance of prevailing he has  
7 taken into consideration the potential that Defendant's defenses could be believed by the  
8 trier of fact, along with other risks of continued litigation. For example, approximately  
9 80% of the class are current employees of Defendant who could potentially testify that  
10 they are correctly classified, and/or that they worked no overtime. (Id. at ¶¶ 19-21.) The  
11 \$1,500,000 appears to be reasonable given the potential that the \$6,500,000 damage  
12 estimate could be reduced by 80% to \$1,300,000. (Id. at ¶22.) Additionally, Defendant  
13 produced declaration from class members that could defeat certification. (Id. at ¶20.)
- 14 b. Risk, expense, complexity and likely duration of further litigation. Given the nature of  
15 the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles  
16 (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any  
17 recovery by the class members.
- 18 c. Risk of maintaining class action status through trial. Even if a class is certified, there is  
19 always a risk of decertification. See Weinstat v. Dentsply Intern., Inc. (2010) 180  
20 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should  
21 retain some flexibility in conducting class actions, which means, under suitable  
22 circumstances, entertaining successive motions on certification if the court subsequently  
23 discovers that the propriety of a class action is not appropriate.").
- 24  
25

- 1 d. Amount offered in settlement. As indicated above, Defendant has agreed to settle for the  
2 non-reversionary amount of \$1,500,000. Based on the claims administrator's  
3 calculations, the 127 participating class members will receive settlement payments  
4 averaging \$7,511.81. (Morales Declaration, ¶13.)
- 5 e. Extent of discovery completed and stage of the proceedings. As discussed above, at the  
6 time of the settlement, the parties had conducted extensive discovery.
- 7 f. Experience and views of counsel. The settlement was negotiated and endorsed by Class  
8 Counsel who, as indicated above, is experienced in class action litigation, including  
9 wage and hour cases.
- 10 g. Presence of a governmental participant. This factor is not applicable here.
- 11 h. Reaction of the class members to the proposed settlement.

12 Number of class members: 128

13 Number of notices mailed: 128

14 Number of undeliverable notices: 0

15 Number of opt-outs: 1

16 Number of objections: 0

17 Number of participating class members: 127

18 CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable."  
19

20  
21 **D. ATTORNEY FEES AND COSTS**

22 Class Counsel request \$500,000 for attorney fees and \$21,995.51, reduced to \$21,475.51  
23 at hearing, for costs.

24 A percentage calculation with or without a lodestar cross-check is permitted in common  
25 fund cases. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement



1 by the parties to the contrary, courts have an independent responsibility to review an attorney fee  
2 provision and award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular*  
3 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.)

4 Here, counsel seek fees pursuant to the percentage method. (Motion at 4-7.) The  
5 \$500,000 fee request is 1/3 of the \$1,500,000 settlement amount, which is average. (*In re*  
6 *Consumer Privacy Cases* (2009) 175 Cal.App.4<sup>th</sup> 545, 558, FN13: “Empirical studies show  
7 that, regardless whether the percentage method or the lodestar method is used, fee awards in  
8 class actions average around one-third of the recovery.”) The Court finds the \$500,000 fee  
9 request to be reasonable in amount. Further, the notice expressly advised class members of the  
10 fee request. No class member objected.

11  
12 Plaintiff has consented in writing to the 50-50 division of any fee award between the two  
13 firms representing him and the class. (Declaration of John Lee, ¶20.)

14 As for costs, Class Counsel request \$21,475.51. This is less than the \$22,000 cap, which  
15 was made known to class members and not objected to. The costs to date include filing fees,  
16 fees for service of process, travel and accommodations (for depositions and mediation), legal  
17 research, court reporters, postage, Case Anywhere costs, and other miscellaneous items. (Pickett  
18 Declaration, ¶44; Declaration of Brett Markson, ¶22; lodged billing and cost records of both  
19 firms.) The costs appear to be reasonable and necessary to the litigation, are reasonable in  
20 amount, and were not objected to by the class.

21 For all of the foregoing reasons, the fee and cost requests are approved.

22  
23 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

24 An incentive fee award to a named class representative must be supported by evidence  
25 that quantifies time and effort expended by the individual and a reasoned explanation of  
financial or other risks undertaken by the class representative. See Clark v. American

1 Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807; see also Cellphone  
2 Termination Cases (2010) 186 Cal.App.4th 1380, 1394-1395 (“[C]riteria courts may consider in  
3 determining whether to make an incentive award include: 1) the risk to the class representative  
4 in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties  
5 encountered by the class representative; 3) the amount of time and effort spent by the class  
6 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
7 enjoyed by the class representative as a result of the litigation. [Citations.]”)

8 Here, the named Plaintiff requests an incentive award of \$15,000. Plaintiff John Lee  
9 retained legal counsel to pursue claims on his own behalf and on behalf of other similarly  
10 situated employees. (Lee Declaration, ¶¶ 2-4.) Plaintiff has assisted with this litigation by  
11 providing information to counsel and helping them learn the technical aspects of the work,  
12 providing documents to counsel, and identifying witnesses. (Id. at ¶¶ 6, 7.) Plaintiff also had his  
13 deposition taken and participated in settlement. (Id. at ¶8.) Plaintiff estimates that he has spent  
14 approximately 80 hours or more on this litigation, including about 20 for mediation alone which  
15 he attended in San Francisco. (Id. at ¶¶ 8, 9.)

16 In light of the above as well as the benefits obtained on behalf of the class, \$10,000  
17 appears to be a reasonable inducement for his participation in this case. The requested incentive  
18 award is approved in the amount of \$10,000.

19 **F. CLAIMS ADMINISTRATION COSTS**

20 Claims administrator CPT Group, Inc. requests \$6,500. (Morales Declaration, ¶ 14.)  
21 This is the amount estimated at the time of preliminary approval. Given the tasks performed  
22 (and still to be performed), this amount appears to be reasonable. This amount was also  
23 disclosed to class members and deemed unobjectionable.

24 **III. CONCLUSION AND ORDER**

25 **A. RULING**

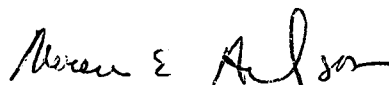
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The Court:

- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards \$500,000 in attorney fees and \$21,475.51 in costs to Edward J. Wynne and J.E.B. Pickett of the Wynne Law Firm and Brett S. Markson and Timothy A. Pico of Markson Pico LLP;
- (4) Awards \$10,000 as an incentive award to Class Representative John Lee;
- (5) Awards \$6,500 in claims administration costs to CPT Group, Inc.;
- (6) Approves \$2,500 PAGA penalty payment to the LWDA;
- (7) Enters Judgment;
- (8) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b); and
- (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for January 10, 2018 at 8:30 a.m. Final Report is to be filed by January 3, 2018.

Dated:

6/28/17

  
MAREN E. NELSON  
Judge of the Superior Court

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