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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MARIO FERNANDEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated, and on behalf of the State of
California, as a private attorney general,

Plaintiffs,

vs.

NUVISION FEDERAL CREDIT UNION, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **30-2020-01161691-CU-OE-CXC**
Consolidated with Case No.:
30-2020-01165529-CU-OE-CXC

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: June 16, 2022
Hearing Time: 2:00 p.m.

Judge: Hon. Peter J. Wilson
Dept.: CX102

Action Filed: September 23, 2020
Trial Date: Not Set

This matter is before the Honorable Peter J. Wilson of the Superior Court of the State of
California, in and for the County Orange, on June 16, 2022, for the hearing on motion by Plaintiff
Mario Fernandez (“Plaintiff”) for preliminary approval of the class settlement with Defendant

PRELIMINARY APPROVAL ORDER

1 Nuvision Federal Credit Union (“Defendant”). The Court, having considered the briefs, argument
2 of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
3 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

4
5 **IT IS HEREBY ORDERED:**

6 1. The Court preliminarily approves the Class Action Settlement Agreement
7 (“Agreement”) attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [ROA # ____]. This is
9 based on the Court’s determination that the Settlement set forth in the Agreement is within the
10 range of possible final approval, pursuant to the provisions of Section 382 of the California Code
11 of Civil Procedure and California Rules of Court, rule 3.769.

12 2. This Order incorporates by reference the definitions in the Agreement, and all
13 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

14 3. The Gross Settlement Amount to be paid by Defendant is One Million Thirty-Five
15 Thousand Dollars (\$1,035,000) (the “Gross Settlement Amount”) to fund the settlement of the
16 Action. It appears to the Court on a preliminary basis that the settlement amount and terms are
17 fair, adequate and reasonable as to all potential Class Members when balanced against the risks to
18 Plaintiff and Defendant relating to certification, liability and damages issues. It further appears
19 that investigation and research have been conducted such that counsel for the Parties are able to
20 reasonably evaluate their respective positions. It further appears to the Court that settlement at this
21 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
22 would be presented by the further prosecution of the Action. It further appears that the Settlement
23 has been reached as the result of serious and non-collusive, arms-length negotiations. The Court
24 therefore preliminarily finds that the Settlement is fair, adequate, and reasonable when balanced
25 against the probable outcome of further litigation and the significant risks relating to certification,
26 liability, and damages issues.

1 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, which is presently \$345,000, an award of litigation expenses incurred,
3 not to exceed \$20,000, and proposed Class Representative Service Payment to the Plaintiff in an
4 amount not to exceed \$10,000. The Court will not approve the amount of attorneys' fees and
5 costs, nor the amount of any service award, until the Final Approval Hearing. Plaintiff will be
6 required to present evidence supporting these requests, including lodestar, prior to final approval.

7 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
8 certification of a class for settlement purposes only. This stipulation will not be deemed
9 admissible in this or any other proceeding should this Settlement not become final. For settlement
10 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
11 previously were employed by Defendant in California and were classified as non-exempt
12 employees at any time during the Class Period." The Class Period is October 16, 2016 to October
13 31, 2021. There are approximately 352 individuals in the Class.

14 6. The Court concludes that, for settlement purposes only, the Class meets the
15 requirements for certification under section 382 of the California Code of Civil Procedure in that:
16 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
17 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
18 community of interest amongst the members of the Class with respect to the subject matter of the
19 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
20 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
21 action is superior to other available methods for the efficient resolution of this controversy; and (f)
22 counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
23 representative of the Class.

24 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
25 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
26 of Blumenthal Nordrehaug Bhowmik De Blouw LLP and Jose Garay of Jose Garay ALPC as
27 Class Counsel for the Class.
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1 8. Subject to final approval and the entry of judgment, the Court preliminarily
2 approves the proposed class release of the Released Class Claims which are defined as “all claims
3 under state, federal or local law, whether statutory, common law or administrative law which were
4 alleged or could have been alleged based on the facts set forth in the operative complaint in the
5 Action, including: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay
6 overtime wages; (4) failure to provide required meal periods; (5) failure to provide required rest
7 periods; (6) failure to provide accurate itemized statements; (7) failure to reimburse employees for
8 required expenses; (8) failure to provide wages when due; and (9) violation of the California
9 Labor Code Private Attorneys General Act; including injunctive relief, punitive damages,
10 liquidated damages, penalties based on the facts of the operative complaint in the Action, interest,
11 fees, costs, and all other claims and allegations made or which could have been made based on the
12 facts of the operative complaint filed in the Action which occurred during the Class Period, and
13 excluding all other claims, including claims for vested benefits, wrongful termination,
14 unemployment insurance, disability, social security, workers’ compensation, and class claims
15 outside of the Class Period and PAGA claims outside of the PAGA Period”.

16 9. Subject to final approval and the entry of judgment, the Court preliminarily
17 approves the proposed release of the PAGA Released Claims which are defined as “all PAGA
18 claims for civil penalties under California Labor Code Sections 2698 *et. seq.*, predicated on the
19 violations of the applicable California Labor Code sections and applicable Wage Orders as alleged
20 in the LWDA Notices submitted by Plaintiff and the operative complaint in the Action which
21 occurred during the PAGA Period (“Released PAGA Claims”). The release of the Released
22 PAGA Claims shall be effective as to all Aggrieved Employees, regardless of whether an
23 Aggrieved Employee submitted a request for an exclusion from the Class.

24 10. The Court hereby approves, as to form and content, the Notice of Proposed
25 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
26 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
27 accurately inform the Class of all material elements of the proposed Settlement, of the Class
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1 Members' right to be excluded from the Class by submitting a written opt-out request, and of each
2 member's right and opportunity to object to the Settlement. The Court further finds that the
3 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
4 and this Order meets the requirements of due process, is the best notice practicable under the
5 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
6 Court orders the mailing of the Class Notice Packets by first class mail, pursuant to the terms set
7 forth in the Agreement.

8 11. The Court hereby appoints Simpluris as Settlement Administrator. No later than
9 fourteen (14) calendar days after preliminary approval of the Settlement by the Court, Defendant
10 shall provide to the Settlement Administrator an electronic spreadsheet with the Class Data. The
11 Settlement Administrator will perform address updates and verifications as necessary prior to the
12 mailing of the Class Notice. Using best efforts to mail it as soon as possible, and in no event later
13 than 14 days after receiving the Class information spreadsheet, the Settlement Administrator will
14 mail the Class Notice to all Class Members via first-class U.S. Mail. Subject to Court approval,
15 the Settlement Administrator will receive payment out of the Gross Settlement Amount for its
16 reasonable fees and expenses in an amount not to exceed \$12,000 ("Settlement Administration
17 Expenses").

18 12. The Court hereby preliminarily approves the proposed procedure for exclusion
19 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
20 from the Class as provided in the Class Notice by following the instructions for requesting
21 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
22 postmarked by no later than sixty (60) calendar days after the date of the mailing of the Class
23 Notice and received by the Settlement Administrator. If a Class Notice Packet is re-mailed, the
24 response date for opt-outs will be extended an additional 15 days. The Court reserves the right to
25 accept an untimely request for exclusion for good cause. Any such person who chooses to opt out
26 of and be excluded from the Class will not be entitled to any recovery under the Settlement and
27 will not be bound by the Settlement or have any right to object, appeal or comment thereon
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1 (except that no Aggrieved Employee may opt out of the PAGA portion of the settlement and any
2 Aggrieved Employee who requests exclusion from the Class will still recover their portion of the
3 PAGA payment and will be bound by the release of the Released PAGA Claims). Class Members
4 who have not requested exclusion shall be bound by all determinations of the Court, the
5 Agreement and the Judgment. A request for exclusion may only opt out that particular individual,
6 and any attempt to effect an opt out of a group, class, or subclass of individuals is not permitted
7 and will be deemed invalid.

8 13. Any Class Member who has not opted out may object or express the Member's
9 views regarding the Settlement, may appear at the final approval hearing, and may present
10 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
11 and determined by the Court as provided in the Notice. Class Members will have sixty (60) days
12 from the date of the mailing of the Class Notices to submit their written objections to the
13 Settlement Administrator and counsel for both parties in accordance with the instructions in the
14 Class Notice. If a Class Notice Packet is re-mailed, the response date for written objections will
15 be extended an additional 15 days. The Court reserves the right to accept an untimely written
16 objection for good cause. Alternatively, Class Members may appear at the Final Approval
17 Hearing to make an oral objection.

18 14. A Final Approval Hearing shall be held before this Court on _____, 2022
19 at 2:00 p.m. in Department CX102 of the Orange County Superior Court to determine all
20 necessary matters concerning the Settlement, including: whether the proposed settlement of the
21 Actions on the terms and conditions provided for in the Agreement is fair, adequate and
22 reasonable and should be finally approved by the Court; whether the Final Approval Order and
23 Judgment should be entered herein; whether the plan of allocation contained in the Agreement
24 should be approved as fair, adequate and reasonable to the Class Members; and to finally approve
25 attorneys' fees and costs, the service award, and the expenses of the Settlement Administrator.
26 Both the motion for final approval and the motion for attorneys' fees, costs and service award
27 shall be heard at the Final Approval Hearing and the papers in support of the motions are to be
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1 filed with the Court and served on all counsel no later than sixteen (16) court days before the
2 hearing. Plaintiff shall serve this Order on the LWDA.

3 15. Neither the Settlement nor any exhibit, document, or instrument delivered
4 thereunder shall be construed as a concession or admission by Defendant in any way that the
5 claims asserted have any merit or that this Action was properly brought as a class or representative
6 action, and shall not be used as evidence of, or used against Defendant as, an admission or
7 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
8 omission by Defendant or with respect to the truth of any allegation asserted by any person.
9 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
10 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
11 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
12 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
13 evidence of a presumption, concession, indication or admission by Defendant of any liability,
14 fault, wrongdoing, omission, concession or damage.

15 16. In the event the Settlement does not become effective in accordance with the terms
16 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
17 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
18 and the Parties shall revert to their respective positions as before entering into the Agreement, and
19 expressly reserve their respective rights regarding the prosecution and defense of this Action,
20 including all available defenses and affirmative defenses, and arguments that any claim in the
21 Action could not be certified as a class action and/or managed as a representative action. In such
22 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
23 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
24 the Agreement with respect to the effect of the Agreement if it is not approved.

25 17. The Court reserves the right to adjourn or continue the date of the final approval
26 hearing and all dates provided for in the Agreement without further notice to Class Members, and
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1 retains jurisdiction to consider all further applications arising out of or connected with the
2 proposed Settlement.

3 18. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
4 further orders of the Court at the Final Approval Hearing.

5 **IT IS SO ORDERED.**

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7 Dated: _____

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HON. PETER J. WILSON
JUDGE, SUPERIOR COURT OF CALIFORNIA

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