

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN BERNARDINO**

14
15 KEELAIN GONZALEZ, on behalf of himself and
16 on behalf of all persons similarly situated, and on
17 behalf of the State of California, as a private
attorney general,

18 Plaintiffs,

19 vs.

20 PACIFIC WESTERN BANK, a California
21 Corporation; DOES 1 through 50,
inclusive,

22 Defendants.

Case No. CIVSB2127657

[Related Case: CIVSB2127696]

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Hearing Date: June 20, 2023 _

Hearing Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept: S26

Action Filed: September 29, 2021

Trial Date: Not Set

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28 **FINAL APPROVAL ORDER AND JUDGMENT**

1 The motion of Plaintiff Keelain Gonzalez (“Plaintiff”) for an order finally approving the
2 Class Action Settlement Agreement (“Agreement”) with Defendant Pacific Western Bank
3 (“Defendant”), and the motion for attorneys’ fees and costs, service payment, duly came on for
4 hearing on June 20, 2023 before the Honorable David Cohn.

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6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Bernardino, and over all Parties to this
13 litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Two Million Six Hundred
16 Thousand Dollars (\$2,600,000) and the terms set forth in the Agreement are fair, reasonable, and
17 adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

- 25 5. On February 6, 2023, the Court entered the order granting preliminary approval of
26 the Settlement (“Preliminary Approval Order”). In this Preliminary Approval Order, the Court
27 approved conditional certification of the Class for settlement purposes only.

1 wage and hour class actions. There has been no collusion between the parties in reaching the
2 proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for the Parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. Two (2) requests for exclusion were received.

9 e. The participation rate was high. 1,381 Class Members will be mailed a
10 settlement payment, representing 98.86% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$866,666 for attorneys' fees, representing one-third (1/3) of the Gross
20 Settlement Amount, and \$21,470.33 for litigation costs and expenses, is reasonable and adequate,
21 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
22 the results achieved by Class Counsel. The requested award is cross-checked by reference to Class
23 Counsel's lodestar.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
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1 the risks and burdens undertaken by the Plaintiff in the litigation, for the time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for the execution of a general
3 release.

4 **Administration Expenses Payment**

5 13. The Administrator shall calculate and administer the payment to be made to the
6 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
7 Class Representative Service Payment to the Plaintiff, distribute the PAGA Penalties, issue any
8 required tax reporting forms, calculate withholdings and perform the other remaining duties set
9 forth in the Agreement. The Administrator has documented \$22,990 in fees and expenses, and
10 this amount is reasonable in light of the work performed by the Administrator.

11 **PAGA Penalties**

12 14. The Agreement provides for a PAGA Penalties payment out of the Gross
13 Settlement Amount of \$60,000, which shall be allocated \$45,000 to the LWDA as the LWDA
14 PAGA Payment and \$15,000 to be distributed to the Aggrieved Employees based on their
15 respective PAGA Pay Periods. "Aggrieved Employees" are all individuals who are or previously
16 were employed by Defendant Pacific Western Bank in California who were classified as hourly,
17 non-exempt employees at any time during the PAGA Period, which is July 26, 2020 through
18 November 3, 2022. The PAGA Payment shall be allocated to all Aggrieved Employees regardless
19 of whether they request exclusion. The PAGA Payment is fair, reasonable and adequate.

20 **II.**

21 **ORDERS**

22 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

23 1. The certification of the Class for the purposes of settlement is confirmed. The
24 Class is defined as follows:

25 All individuals who are or previously were employed by Defendant Pacific
26 Western Bank in California who were classified as hourly, non-exempt employees
at any time during the Class Period.

27 The Class Period is from October 1, 2018 through November 3, 2022.

28 **FINAL APPROVAL ORDER AND JUDGMENT**

2. All persons who meet the foregoing definition are members of the Class, except for those individuals who timely submitted a signed Request for Exclusion (“opt out”) from the Class. The two individuals who submitted a signed Request for Exclusion are Carol D. Moore and Alma D. Anguiano.

3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the best interest of the Class.

4. Class Counsel are awarded attorneys' fees in the amount of \$866,666 and costs in the amount of \$21,470.33, which shall be distributed in accordance with the Agreement. Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or members of the Class.

5. The payment of the Class Representative Service Payment in the amount of \$10,000 to the Plaintiff is approved and is to be distributed in accordance with the Agreement.

6. The payment of \$22,990 to the Administrator for their fees and expenses is approved and is to be distributed in accordance with the Agreement.

7. The PAGA Payment of \$60,000 is approved and is to be distributed in accordance with the Agreement.

8. The Agreement and this Settlement are not an admission by Defendant, nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in the Action as

1 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
2 theory of claim or issue preclusion or similar defense as to the Released Class Claims.

3 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
4 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Judgment shall be
5 posted on Class Counsel's website as set forth in the Class Notice. It shall not be necessary to
6 send notice of entry of this Final Approval Order and Judgment to individual Class Members.

7 10. If the Agreement does not become final and effective in accordance with the terms
8 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
9 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
10 revert to their respective positions as of before entering into the Agreement, and expressly reserve
11 their respective rights regarding the prosecution and defense of this Action, including all available
12 defenses and affirmative defenses, and arguments that any claim in the Action could not be
13 certified as a class action and/or managed as a representative action.

14 11. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
15 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
16 Administrator no later than 15 days after the Effective Date. Neither Defendant nor any of the
17 Released Parties shall have any further liability for costs, expenses, interest, attorney's fees, or for
18 any other charge, expense or liability, except as provided by the Agreement.

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20 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

21 1. Final judgment is hereby entered in conformity with the Agreement and this
22 Court's Preliminary Approval Order. This document shall constitute a final judgment pursuant to
23 California Rule of Court 3.769(h).

24 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
25 Plaintiff, and all members of the Class, shall take nothing in the Action.

26 3. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
27 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any

1 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
2 arising from or in connection with the distribution of settlement benefits.

3 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 5. Effective on the date when Defendant fully funds the entire Gross Settlement
6 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
7 Payments, all Participating Class Members will release Defendant and the other Released Parties
8 from any and all "Released Class Claims". The "Released Class Claims" are all class claims pled
9 or could have been pled based on the factual allegations contained in the Operative Complaint
10 which occurred during the Class Period, and expressly excluding all other claims, including claims
11 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
12 workers' compensation, and class claims outside of the Class Period. The "Released Parties" are
13 Defendant and each of its former and present directors, officers, shareholders, owners, attorneys,
14 insurers, predecessors, successors, assigns and subsidiaries.

15 6. Effective on the date when Defendant fully funds the entire Gross Settlement
16 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
17 Payments, Defendant and the other Released Parties shall receive a release from the Aggrieved
18 Employees and the State of California of all PAGA claims pled or could have been pled based on
19 the factual allegations contained in the Operative Complaint and PAGA Notice sent by Plaintiff
20 that occurred during the PAGA Period as to the Aggrieved Employees, and expressly excluding all
21 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
22 disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period
23 ("Released PAGA Claims"). The release of the Released PAGA Claims shall be effective as to all
24 Aggrieved Employees, regardless of whether an Aggrieved Employee submitted a request for an
25 exclusion from the Class.

26 7. Effective on the date when Defendant fully funds the entire Gross Settlement
27 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
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FINAL APPROVAL ORDER AND JUDGMENT

1 Payments, Plaintiff generally, fully and finally releases and discharges the Released Parties from
2 any and all the Plaintiff's Released Claims, as more fully set forth in the Agreement.

3 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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5 Dated: _____

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HON. DAVID COHN
JUDGE, SUPERIOR COURT OF CALIFORNIA

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FINAL APPROVAL ORDER AND JUDGMENT