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LOS ANGELES SUPERIOR COURT

FEB 07 2019

S. DREW

**FILED**  
Superior Court of California  
County of Los Angeles

FEB 15 2019

Sherri R. Carter, Executive Officer/Clerk  
By Neil M. Raya Deputy

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FEB 17 2019

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DEPT. 9

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES — CENTRAL DISTRICT**

MONAH STAHL, individually and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

BANK OF THE WEST,

Defendant.

Case No. BC673397  
Assigned for All Purposes to:  
Hon. Yvette M. Palazuelos  
Dept. 311

**CLASS ACTION**

**[PROPOSED] FINAL APPROVAL  
ORDER**

Action Filed: August 23, 2017  
Trial Date: None Set

Plaintiff Monah Stahl has submitted to the Court a Motion for Final Approval of the Settlement Agreement (“Motion”) with defendant Bank of the West (“BOTW”) in this case. The Parties’ motion for final approval of class action settlement is GRANTED. The court approves: (1) \$66,600 for attorney fees to Class Counsel; (2) \$5,000 for attorney costs to Class Counsel; (3) \$5,000 for an enhancement award to the class representative; and (4) \$55,000 for claims administration costs to Epiq Class Action and Claims Solutions.

**BACKGROUND**

In this consumer class action case, Plaintiff Monah Stahl alleges Defendant Bank of the West (“BOTW”) improperly assessed overdraft fees arising from non-recurring debit transactions for Uber and Lyft rides by customers who did not opt into BOTW’s debit card overdraft service. The class action complaint filed on August 23, 2017 in the Superior Court for the State of

1 California, County of Los Angeles alleges claims for (1) Breach of Contract; (2) Violation of the  
2 California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200); and (3) Violation of the  
3 Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.). Bank of the West denies all  
4 allegations contained in the Complaint.

5 After Plaintiff filed the Complaint and served BOTW, the parties stipulated to continue the  
6 deadline for BOTW to file a motion to compel arbitration while they explored options for  
7 resolving the case without expending resources on motion practice. On March 19, 2018, the  
8 parties filed a stipulation stating that they had reached a settlement in principle that would resolve  
9 the lawsuit on a class-wide basis and requesting that the Court stay all deadlines pending approval  
10 of the settlement. The Court approved the stipulation on March 23, 2018.

11 The Parties subsequently executed a long-form Settlement Agreement and Release  
12 (“Settlement Agreement”), a copy of which was filed with the Court. Following supplemental  
13 briefing and revisions to the Settlement Agreement, the Court granted preliminary approval to the  
14 agreement, as amended, on September 26, 2018.

15 Now before the Court is the motion for final approval of the Settlement Agreement.

16 **SETTLEMENT CLASS DEFINITION**

- 17 • The “Class” or “Class Members” means all present and former holders of  
18 Consumer Deposit Accounts with BOTW who were not opted into BOTW’s Debit  
19 Card Overdraft Service at the time they were charged an overdraft fee by BOTW  
20 for a transaction with Uber or Lyft during the Class Period. Excluded from the  
21 Class are the Judge presiding over this Action and the Court staff. (Second  
22 Amended Settlement Agreement, ¶ 2.04.)
- 23 ○ Class Period is from August 23, 2013 through April 30, 2018. (¶ 2.08.)
  - 24 ○ The parties stipulate to class certification for settlement purposes only. (¶  
25 3.01.)
  - 26 ○ The “Settlement Class” or “Settlement Class Members” means persons who  
27 are members of the Class defined in ¶ 2.04 who do not opt out and are not  
28

1 excluded from the Settlement pursuant to the procedures set forth in the  
2 Settlement Agreement. (¶ 2.34.)

- 3 ○ There are approximately 3,847 putative Class Members. (Declaration of  
4 Cameron Azari ¶ 13.)

5 **TERMS OF SETTLEMENT AGREEMENT**

6 The essential terms are as follows:

- 7 • The Settlement Amount (“SA”) is **\$222,000, non-reversionary**. (¶ 2.33.)
- 8 • The Net Settlement Fund (“NSF”) (**\$90,400**) is the SA minus the following:
- 9 ○ Up to **\$66,600** (30%) for attorney fees (¶ 5.06(a));
- 10 ○ Up to **\$5,000** for litigation costs (Notice pg. 4);
- 11 ○ Up to **\$5,000** for a Service Award to the Class Representative (¶ 5.05); and
- 12 ○ Estimated **\$55,000** for Administration Expenses (Notice pg. 4).
- 13 • “Opt-Out and Objection Deadline” means the date that is 95 days after the entry of
- 14 the Preliminary Approval Order. (¶ 2.24.) Requests for Exclusion and Written
- 15 Objections must be mailed to the Settlement Administrator and postmarked on or
- 16 prior to the Opt-Out/Objection Deadline to be considered valid. (¶¶ 3.08, 3.10(a).)
- 17 ○ If a Consumer Deposit Account has more than one account holder and one
- 18 account holder opts-out, the opt-out will be deemed to apply to all holders
- 19 of that account. (¶ 3.08(b).)
- 20 ○ If 50 or more Class Members opt out, BOTW may void the settlement (¶
- 21 3.09.)
- 22 • Upon the Effective Date, the Settlement Administrator shall determine each
- 23 Settlement Class Member’s Settlement Share by dividing the Net Settlement Fund
- 24 by the number of Settlement Class Members, such that Settlement Class Members
- 25 will share pro rata in the Net Settlement Fund. (¶ 5.03(c).)
- 26 ○ Within 5 business days after the Effective Date, the Settlement
- 27 Administrator shall wire to BOTW, from the Escrow Account, an amount
- 28 equal to the aggregate Settlement Share of all Settlement Class Members

1 with Open Consumer Deposit Accounts. At the same time, the Settlement  
2 Administrator shall provide BOTW with a list of amounts to be paid to  
3 Settlement Class Members with Open Consumer Deposit Accounts, in an  
4 electronic format, including each Settlement Class Member's name,  
5 address, last four digits of their account number and his or her Settlement  
6 Share. BOTW shall directly deposit the applicable Settlement Share into  
7 such Settlement Class Members' Open Consumer Deposit Accounts, within  
8 60 days of the Effective Date. If any such Settlement Class Member closes  
9 their deposit account before BOTW can deposit the Settlement Share, then  
10 BOTW shall deposit those Settlement Shares back into the Escrow Account,  
11 and those Settlement Class Members shall be paid by check by the  
12 Settlement Administrator in accordance with the procedures for making  
13 payments to Settlement Class Members with Closed Consumer Deposit  
14 Accounts. BOTW shall receive no compensation for performing these  
15 actions (§ 5.03(d)(2).)

- 16 ○ For Settlement Class Members with Closed Consumer Deposit Accounts,  
17 the Settlement Administrator shall mail each such Settlement Class Member  
18 a check in the amount of each applicable Settlement Share within 60 days of  
19 the Effective Date. Payments to Settlement Class Members whose accounts  
20 were originally identified as an Open Consumer Deposit Account but  
21 closed, or who are receiving a secondary distribution pursuant to Section  
22 5.03(d)(5) shall not be subject to this 60 day limitation, but shall be made as  
23 soon as practicable. The checks shall indicate that they expire 180 days after  
24 the date of issuance. (§ 5.03(d)(3).)

- 25 ○ BOTW shall have no responsibility or liability for any taxes owed by  
26 Settlement Class Members as a result of the amounts paid to such  
27 Settlement Class Members under this Agreement (§ 5.03(d)(6).)



- 1       • Handling of Residual Funds: Any funds remaining in the Escrow Account after all  
2       payments are made to satisfy Service Awards, Fee and Expense Awards and  
3       Administration Expenses, and after the first distribution of Settlement Shares as  
4       described in paragraphs 5.03(d)(2) through (d)(4) shall, within 60 days, be  
5       distributed evenly to (a) Settlement Class members with Open Consumer Deposit  
6       Accounts and (b) those Settlement Class Members with Closed Consumer Deposit  
7       Accounts who cashed the first check sent to them. Payments shall be made by  
8       credit to Open Consumer Deposit Accounts and by check to Closed Consumer  
9       Deposit Accounts. If there are any funds remaining in the Escrow Account after  
10      this second distribution those funds will be paid evenly to Settlement Class  
11      Members with Open Consumer Deposit Accounts. (§ 5.03(d)(5).)
- 12      • The claims administrator will be Epiq Class Action and Claim Solutions, Inc. (§  
13      2.32.)
  - 14          ○ The Settlement Administrator has executed the Bank of the West Data  
15          Management Agreement. The Settlement Administrator, Class Counsel, and  
16          Defense Counsel understand and agree that they will be provided with  
17          certain personal identifying information relating to BOTW customers who  
18          are Class Members, they agree to keep this information secure and not to  
19          disclose or disseminate this information to any third parties, and they agree  
20          such information will be used solely for the purpose of effecting this  
21          Settlement. (§ 3.06.)
- 22      • Class Representative and the Settlement Class Members Provide the Following  
23      Releases: Upon the Effective Date, and in consideration of the promises and  
24      covenants set forth in this Settlement Agreement, the Class Representative and  
25      each Settlement Class Member, and each of their respective spouses, children,  
26      executors, representatives, guardians, wards, heirs, estates, bankruptcy estates,  
27      bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all  
28      those who claim through them or who assert claims (or could assert claims) on their

1 behalf, will be deemed to have completely released and forever discharged BOTW,  
2 Uber and Lyft and each of those entities' past and present parents, subsidiaries,  
3 affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns,  
4 and third party suppliers and vendors (collectively, the "Released Parties"), from  
5 any actions, causes of action (in law, in equity or administratively), suits, debts,  
6 liens, or claims, known or unknown, suspected or unsuspected, fixed or contingent,  
7 which they may have or claim to have, that directly or indirectly arise out of, relate  
8 to, or derive in any way from BOTW's assessment of overdraft fees for Uber  
9 and/or Lyft transactions during the Class Period, but excluding any tort or other  
10 claims that do not directly or indirectly arise out of, relate to or derive in any way  
11 from BOTW's assessment of overdraft fees for Uber and/or Lyft transactions  
12 during the Class Period; or arise out of relate to, or derive in any way from the  
13 administration of the Settlement (the "Released Claims"). For avoidance of doubt,  
14 the Parties agree that this is not a general release by the Settlement Class Members  
15 in favor of BOTW, Uber and/or Lyft or any other entity. (§ 6.01.)

- 16 ○ Covenant Not To Sue. Class Representative agrees and covenants, and each  
17 Settlement Class Member will be deemed to have agreed and covenanted,  
18 not to sue any of the Released Parties with respect to any of the Released  
19 Claims, and agree to be forever barred from doing so in any court of law or  
20 equity, arbitration proceeding, or any other forum. (§ 6.02.)
- 21 ○ "Lyft" refers to Lyft, Inc. and all of its present and former parents,  
22 predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners,  
23 shareholders, officers, directors, attorneys, vendors, accountants, agents,  
24 representatives, and employees. (§ 2.21.)
- 25 ○ "Uber" refers to Uber Technologies, Inc. and all of its present and former  
26 parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions,  
27 owners, shareholders, officers, directors, attorneys, vendors, accountants,  
28 agents, representatives, and employees. (§ 2.38.)

1 **ANALYSIS OF SETTLEMENT AGREEMENT**

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

3 1. Was the settlement reached through arm's length bargaining?

4 Yes. Class Counsel represents that, after several rounds of arms-length negotiations and  
5 settlement discussions, Plaintiff, Class Counsel, and Defendant entered into the Settlement  
6 Agreement in this matter, which has been submitted to the Court for approval. (Declaration of  
7 Hassan Zavareei ISO Prelm Approval ¶ 2.) During the settlement negotiations, BOTW provided  
8 confirmation, under penalty of perjury, regarding the number of accounts affected and the total  
9 amount of overdraft fees assessed on BOTW customers who did not opt into BOTW's debit card  
10 overdraft service. (*Id.* at ¶8.) Class Counsel represents that the parties did not discuss attorneys'  
11 fees and costs or any potential incentive award until they first agreed on the material terms of the  
12 settlement, including the definition of the Settlement Class, notice, class benefits, claims process,  
13 and scope of relief. (*Id.* at ¶9.)

14 2. Were investigation and discovery sufficient to allow counsel and the court to act  
15 intelligently?

16 Yes. BOTW has provided Class Counsel with a declaration affirming that it has conducted  
17 a diligent investigation of its records and confirming the number of Consumer Deposit Account  
18 holders included within the Class and the total overdraft fees assessed Class Members for  
19 Uber/Lyft transactions during the Class Period. (Settlement Agreement ¶ 3.03.) A copy of this  
20 declaration (Declaration of Claire Pimental) is attached to the Corrected Zavareei Declaration ISO  
21 Prelm Approval as Exhibit 5.

22 3. Is counsel experienced in similar litigation?

23 Yes. Class Counsel is experienced in class action litigation (Declaration of Richard D.  
24 McCune ISO Prelm Approval, ¶¶ 2-5; Declaration of Jeffrey Kalief ISO Prelm Approval, ¶¶ 4-7;  
25 Exhibit 2, 3, and 4 to the Zavareei Declaration ISO Prelm.)

26 4. What percentage of the class has objected?

27 No objectors. (Azari Decl. ¶18.)  
28

1 **B. Is the settlement fair, adequate, and reasonable?**

2 1. Strength of Plaintiff's case.

3 "The most important factor is the strength of the case for plaintiffs on the merits, balanced  
4 against the amount offered in the settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.  
5 App. 4th 116, 130.)

6 Here, Class Counsel represents that at trial, Plaintiff's best-case scenario would be full  
7 reimbursement of all overdraft fees triggered by Uber or Lyft transactions. According to the  
8 information provided by Defendant, the Settlement Class includes current and former holders of  
9 approximately 3,859 Consumer Deposit Accounts and the Settlement Fund represents  
10 approximately 50% of the Settlement Class's alleged damages. (Zavareei Decl. ISO Prelim  
11 Approval ¶ 13.)

12 BOTW disputes that the overdraft fees were improperly assessed and asserts that, under  
13 Reg E, it is entitled to rely on a merchant's coding of a transaction as recurring or non-recurring.  
14 In addition, BOTW contends that Plaintiff and the Class Members agreed to individually arbitrate  
15 any disputes with BOTW, and have specifically agreed not to pursue their claims against BOTW  
16 as a class action. (*Id.* at ¶ 14.) While Plaintiff disputes Defendant's arguments, it was unclear how  
17 the arguments would be resolved at demurrer, summary judgment or trial. (*Id.* at ¶15.)

18 2. Risk, expense, complexity and likely duration of further litigation.

19 Given the nature of the class claims, the case is likely to be expensive and lengthy to try.  
20 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as  
21 well as any recovery by the class members.

22 3. Risk of maintaining class action status through trial.

23 Even if a class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply*  
24 *Intern. Inc.* (2010) 180 Cal. App. 4th 1213, 1226 ["Our Supreme Court has recognized that trial  
25 courts should retain some flexibility in conducting class actions, which means, under suitable  
26 circumstances, entertaining successive motions on certification if the court subsequently discovers  
27 that the propriety of a class action is not appropriate."].)  
28

1           4. Amount offered in settlement.

2           Plaintiff's counsel obtained a \$222,000 non-reversionary settlement. The \$222,000  
3 Settlement Amount represents approximately 50% of the Settlement Class's alleged damages  
4 (Zavareei Decl. ISO Prelim ¶ 15), which is within the "ballpark" of reasonableness. If the  
5 requested deductions (including the \$55,000 estimated for claim administration) are taken in full,  
6 \$90,400 will remain for distribution to participating class members. Payments to the 3,847  
7 participating class members will average \$23.50 [ $\$90,400 / 3,847 = \$23.65$ ].

8           5. Extent of discovery completed and stage of the proceedings.

9           As indicated above, at the time of the settlement, Class Counsel contends it had conducted  
10 sufficient discovery.

11          6. Experience and views of counsel.

12          The settlement was negotiated and endorsed by class counsel who, as indicated above, is  
13 experienced in class action litigation, including consumer actions. Class Counsel is of the opinion  
14 that the Class Settlement is fair, adequate, and reasonable (Declaration of Annick Persinger ISO  
15 Attorneys' Fees, Costs, and Incentive Awards ("Persinger Decl. ISO Fees") ¶ 21.)

16          7. Presence of a governmental participant.

17          This factor is not applicable here.

18          8. Reaction of the class members to the proposed settlement.

19                   Number of class members: 3,847 (Azari Decl. ¶13.)

20                   Number of notice packets mailed: 3,847 (*Id.* at 15.)

21                   Number of undeliverable notices: 145 (*Id.* at ¶15.)

22                   Number of opt-outs: 0 (*Id.* at ¶18.)

23                   Number of objections: 0 (*Id.* at ¶18.)

24                   Number of Participating Class Members: 3,847 (*Id.* at ¶¶13, 18.)

25                   Average individual payment: \$23.50 [ $\$90,400 / 3,847 = \$23.65$ ].

26                   Highest estimated payment: not provided

27                   Lowest estimated payment: not provided



1 **C. Attorney Fees and Costs**

2 Class Counsel requests an award of **\$66,600** in fees and **\$5,000** in costs. (Motion ISO Fees  
3 at 3:9-10, 9:7-9.) The Settlement Agreement provides for fees up to \$66,600 and costs up to  
4 \$5,000 (¶5.06(a)); the class was provided notice of the requested awards, and no Class Member  
5 objected. (Azari Decl. ¶ 18 and Ex. 3.)

6 “Courts recognize two methods for calculating attorney fees in civil class actions: the  
7 lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple Computer,*  
8 *Inc.* (2001) 91 Cal. App 4th 224, 254, disapproved on another ground in *Hernandez v. Restoration*  
9 *Hardware, Inc.* (2018) 4 Cal. 5th 260.) Here, Class Counsel requests attorney fees using the  
10 percentage method. (Motion ISO Fees 2:3-4.) In common fund cases, the Court may employ a  
11 percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half*  
12 *Int’l.* (2016) 1 Cal. 5th 480, 503.) The fee request represents 30% of the gross settlement amount,  
13 which is the average generally awarded in class actions. (*See In re Consumer Privacy Cases*  
14 (2009) 175 Cal. App. 4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the  
15 percentage method or the lodestar method is used, fee awards in class actions average around one-  
16 third of the recovery.”].)

1 Class Counsel has also provided information, summarized below regarding lodestar.  
2 (Persinger Decl. ISO Fees at Ex. 1.)

Firm	Attorney	Hours	Rate	Total
Tycko & Zavareei	Annick Persinger	79	\$658.00	\$51,982.00
	Andrew Silver	0.2	\$455.00	\$91.00
	Hassan Zavareei	11.9	\$894.00	\$10,638.60
	Akatherine Aizpuru	16.9	\$455.00	\$7,689.50
	Tanya Koshy	60.3	\$658.00	\$39,677.40
Kaliel, PLLC	Jeffrey Kaliel	34.5	\$742.00	\$25,599.00
Kopelowicz Ostrow	Jeff Ostrow	7.25	\$894.00	\$6,481.50
	Jonathan Streisfeld	59.5	\$894.00	\$53,193.00
The Kick Law Firm	Taras Kick	54.9	\$894.00	\$49,080.60
	Robert Dart	6.5	\$742.00	\$4,823.00
McCune Wright Aravalo	Richard McCune	4.5	\$894.00	\$4,023.00
	Jae Kim	0.3	\$742.00	\$222.60
<b>Totals</b>		<b>335.75</b>		<b>\$253,501.20</b>

17 Class counsel's agreed-upon fee split is as follows. First, any costs that exceed the \$5,000  
18 cost cap will be subtracted from the awarded \$66,600. Second, the \$66,600 less additional costs  
19 will be allocated as follows: Tycko & Zavareei LLP (30%); Kopelowitz Ostrow P.A. (30%),  
20 Kaliel PLLC (15%), McCune Wright Arevalo LLP (12.5%), and The Kick Law Firm APC  
21 (12.5%).

22 Class Counsel's percentage-based fee request of \$66,600 is substantially lower than the  
23 lodestar and would require application of a negative multiplier.

24 Here the \$66,600 fee request represents a reasonable percentage of the total funds paid by  
25 Defendant. Notice of the fee request was provided to class members in the notice packet and no  
26 one objected.

1 As for costs, Class Counsel is requesting **\$5,000**. (Persinger Decl. ISO Fees ¶ 16.) This is  
2 equal to the \$5,000 cap in the Settlement Agreement, for which Class Members were given notice.  
3 (Azari Decl. at Ex. 3.) Class Counsel incurred actual costs in the amount of **\$7,448.61**. (Persinger  
4 Decl. ISO Fees at ¶ 16, Ex.4.) The costs listed included Travel/Meals/Parking (\$2,343.48) and  
5 Filing Fees (\$3,699.36). (*Ibid.*) The costs appear to be reasonable in amount and reasonably  
6 necessary to this litigation.

7 Based on the above, the recommendation is to award **\$66,600** for attorneys' fees and  
8 **\$5,000** for attorneys' costs.

9 **D. Incentive Award to Class Representative**

10 Class Counsel requests an enhancement payment of **\$5,000** for Plaintiff Monah Stahl.  
11 (Motion ISO Fees at 9:20-23.)

12 Plaintiff has not filed a declaration describing her contributions to this litigation. Class  
13 Counsel provides as follows: Plaintiff Stahl was integral to litigating and settling this case. Ms.  
14 Stahl put herself forward to protect the class members by being the named plaintiff in this suit.  
15 She also reviewed and collected her records related to the BOTW fees, worked with counsel on  
16 the complaint, and consulted with counsel during settlement to ensure a favorable settlement to the  
17 class. (Persinger Decl. ISO Fees ¶ 22.)

18 Based on the above, the recommendation is to award the requested **\$5,000** to Plaintiff  
19 Monah Stahl.

20 **E. Claims Administration Costs**

21 The claims administrator, Epiq Class Action & Claims Solutions, has not made a request  
22 for costs of administering the settlement. At preliminary approval, anticipated costs were  
23 estimated at \$55,000. (Notice pg. 4.) Epiq has agreed not to seek costs in excess of \$55,000. As of  
24 December 31, 2018, Epiq had incurred Administration Expenses in the amount of \$37,718.02. On  
25 February 7, 2019, Epiq provided a declaration attesting that "[a]s of the day of the declaration,  
26 Epiq has not issued any payments from the Escrow Account. Administration Expenses through the  
27 life of this Settlement shall not exceed \$55,000, which sum includes the anticipated payment for  
28 Administration Expenses incurred through December 31, 2018 [in the amount of \$37,718.02]." //

1 //

2 //

3 IT IS SO ORDERED.

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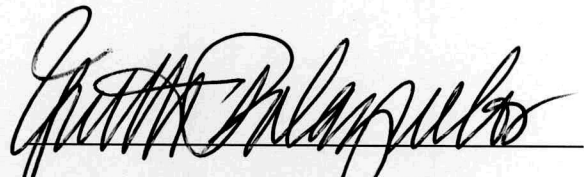
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FEB 15 2019

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Dated: \_\_\_\_\_

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The Honorable Yvette M. Palazuelos

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