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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEBI MISHRA, individually and on behalf of all those similarly situated, 　　　　　Plaintiff, 　　v. COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION; COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION, 　　　　　Defendants.	Case No. 2:17-cv-01785-TLN-EFB **ORDER GRANTING PROVISIONAL CERTIFICATION OF CLASS ACTION; PRELIMINARY APPROVAL OF SETTLEMENT; SETTING HEARING FOR FINAL APPROVAL; ASSOCIATED APPOINTMENTS**

The matter is before the Court on Plaintiff Debi Mishra's ("Plaintiff") motion for preliminary approval of class action settlement reached with Defendants Cognizant Technology Solutions U.S. Corporation and Cognizant Technology Solutions Corporation (collectively, "Defendants"). (ECF No. 20.) The motion is not opposed. After careful examination of the motion, the AMENDED Settlement Agreement, AMENDED notices, and all related filings, and for the reasons set forth below, the motion is hereby GRANTED.

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1   **I.   FACTUAL AND PROCEDURAL BACKGROUND**[1]

2   Defendants are an information technology services company providing consulting services

3   to a wide variety of businesses. One service Defendants provide is Quality Engineering &

4   Assurance ("QE&A"), which includes quality assurance testing for their clients. The employees

5   at issue in this lawsuit are or were part of Defendants' QE&A "Testing" group.

6   *a. Plaintiff's Claims*

7   During the relevant time period, Cognizant Technology Solutions U.S. Corporation

8   employed Plaintiff as a Testing Analyst performing quality assurance testing services onsite at

9   Defendants' client, Blue Shield of California. Plaintiff worked in that capacity until he resigned

10   effective September 4, 2015. Plaintiff contends that following a 2012 reclassification, Defendants

11   allegedly underpaid overtime to Class Members by failing to include certain amounts when

12   calculating the regular rate of pay. Specifically, Plaintiff alleges that on August 16, 2012,

13   Plaintiff received a letter providing notice that the terms and conditions of his employment had

14   changed. Defendants therein informed Plaintiff that his "position has been classified as overtime-

15   eligible." Plaintiff contends the letter went on to explain that his duties and compensation would

16   essentially remain the same, but he would now be paid based on "several components," including

17   base pay, a cost of living adjustment, and overtime, plus a "bonus." This bonus was referred to as

18   a "Tru Up" payment. Plaintiff's overtime would be paid at $32.27 per hour. Plaintiff contends

19   his annual base income at 40 hours of work per week was set at $39,663.65 plus a cost of living

20   adjustment of $5,500, amounting to an annual wage of $45,163.65. At 52 weeks per year,

21   Plaintiff's annual wage-salary was $21.71 per hour. Multiplying this by 1.5 would result in an

22   overtime rate of $32.57, which is the overtime rate Plaintiff contends is stated in Defendants'

23   notice letter.

24   Plaintiff also alleges, however, that the letter indicated Plaintiff was guaranteed to earn

25   "no less than $62,100," and that the bonus would be added to keep his annual income at this level.

26   Plaintiff contends — and Defendants deny — that if the total income were used to calculate the

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28   [1]   Unless otherwise noted, the following facts are taken, often verbatim, from Plaintiff's
Memorandum of Points and Authorities filed in support of the instant Motion. (ECF No. 20-1.)

1   overtime rate, as Plaintiff contends is required, then Plaintiff's overtime rate should have been

2   $44.78. Based on this theory, Plaintiff contends that every time Plaintiff put in an hour of

3   overtime, he was allegedly underpaid by $12.21. The Tru Up program ended May 21, 2016.

4   As part of their investigations related to this action, Plaintiff's counsel retained an expert

5   forensic economist, Jeffrey S. Petersen, Ph.D., to review and analyze Class data. (ECF No. 20-1

6   at 13.) Among other things, Plaintiff's counsel worked with Dr. Petersen to calculate the

7   potential maximum losses under Plaintiff's various theories of recovery. (ECF No. 20-1 at 13.)

8   The total potential damages according to calculations by Dr. Petersen is $11,219,891. (ECF No.

9   20-1 at 13.) As described in more detail below, Defendants reject this analysis, deny that Plaintiff

10 and/or the Class Members are owed any additional wages, and, among other defenses, contend

11 that Plaintiff and the Class Members did not actually work overtime hours and instead merely

12 recorded overtime as a means of obtaining faster and more evenly spread pay. (ECF No. 20-1 at

13 13–14.)

14   b.   *Defendants Deny Plaintiff's Claims*

15   Defendants deny Plaintiffs' allegations and have asserted numerous defenses. Defendants

16 contend Class Members rarely, if ever, worked overtime. Defendants contend that overtime work

17 was not necessary because they had an offshore team that worked through the off hours.

18 Defendants claim that following the shift from salaried to nonexempt hourly wages plus Tru Up

19 payments, putative Class Members recorded overtime hours that they did not actually work in

20 order to receive compensation sooner and more evenly across pay periods (i.e., by earning

21 overtime that would be paid out each pay period, rather than receiving only base hourly wages in

22 one pay period followed by a Tru Up payment every four weeks). Defendants contend a

23 comparison of Class Members' time records before and after Defendants ceased offering Tru Up

24 payments (i.e., May 21, 2016) proves this. Defendants also contend the putative Class Members

25 fell within the FLSA's computer exemption and therefore would not be entitled to overtime

26 damages under the FLSA.

27   Further, Defendants contend that individualized issues as to both liability and damages

28 would overwhelm common questions, precluding class certification. Defendants argue this is

1   particularly true given that putative Class Members worked exclusively offsite at more than 180

2   different Cognizant clients and for more than 1,110 different client projects.

3   c.   *Procedural History*

4   Plaintiff filed the original Complaint on August 25, 2017, asserting claims under the

5   FLSA, the California Labor Code, and California's Unfair Competition Law (Cal. Bus. and Prof.

6   Code §17200). (ECF No. 1.) On November 3, 2017, Cognizant filed a Motion to Dismiss/Strike.

7   (ECF No. 8.)

8   On January 31, 2018, in response to the Motion, Plaintiff filed a First Amended

9   Complaint (ECF No. 14), alleging five causes of action: (1) failure to pay overtime wages under

10 the FLSA; (2) failure to pay overtime wages under the California Labor Code; (3) failure to

11 timely pay wages (California Labor Code § 204); (4) violation of California Business and

12 Professions Code § 17200 (unlawful business practices); and (5) violation of § 17200 (unfair

13 business practices). By way of the FAC, Plaintiff seeks to represent a national FLSA class and a

14 California subclass (together referred to as "the Class" or "Class Members") of current and

15 former employees who were eligible to receive Tru Up payments, as follows:

16   • The National FLSA Class: All current and past employees of named Defendants,

17   DOES 1 to 10, and each of them who participated in or were paid income subject

18   to the Tru Up program alleged herein within the time period of the relevant

19   statute(s) of limitation.

20   • The California Class: Those class members who performed work for Defendants,

21   DOES 1 to 10, and each of them such that the sub-class members' work was

22   regulated by the California Labor Code (e.g. resided in and worked in California,

23   or otherwise performed non-trivial amounts of work in California).

24 (ECF No. 14, ¶ 29(a)-(b).)

25   The Parties mediated the case before the Honorable William Cahill (Ret.). In advance of

26 mediation, Defendants produced Plaintiff's personnel file and data reflecting putative Class

27 Members' wage statements and total daily work hours recorded, a payroll legend, as well as

28 information concerning the number of putative Class Members eligible to receive Tru Up

1   payments during the relevant time period, number of workweeks, and number of putative Class

2   Members who resigned or were terminated. Plaintiff provided documents relating to his

3   employment, including annual compensation letters, wage statements, and timesheets. (ECF No.

4   20-2, Watson Decl., ¶ 9-10.)

5   On May 29, 2018, the Parties participated in a full day of private mediation before Retired

6   Judge Cahill but did not reach a resolution. Judge Cahill issued a mediator's proposal on May 30,

7   2018. After negotiations and a series of counteroffers, the Parties reached an agreement on June

8   8, 2018. Over the next several months, the Parties extensively negotiated, drafted, and executed a

9   long-form Settlement Agreement that was put before the Court for preliminary approval. (ECF

10 No. 20-3.)

11   After a thorough review of the proposed settlement and applicable law, the Court issued a

12 Minute Order (ECF No. 25) expressing concern regarding the proposed mechanism for having

13 potential claimants opt into the FLSA components of the proposed settlement. The Court ordered

14 the Parties to submit written briefs containing legal support for their proposed opt-in process, or

15 in the alternative, invited the Parties to submit an amended settlement agreement correcting the

16 apparent deficiency. (ECF No. 25.) On May 11, 2020, the Parties filed a Response to the Court's

17 Minute Order, attaching an Amended Settlement Agreement, amended Notices, an amended

18 FLSA opt-in form, and amended proposed orders. (ECF No. 26.) The Amended Settlement

19 Agreement is presently before the Court for preliminary approval.

20   **II.   SUMMARY OF PROPOSED SETTLEMENT**

21   The Court has reviewed the terms of the proposed amended settlement as set forth in the

22 Amended Settlement Agreement and Stipulation.[2] (ECF No. 26-1.) A summary of those terms is

23 set forth below.

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    [2]   The Court understands the Amended Settlement Agreement and Stipulation, along with
    the amended Class Notices and any related documents, supersede the original documents
    submitted to the Court on December 11, 2018 (ECF No. 20.). Any reference to "the Agreement"
28 or "Notice" hereafter is to the amended documents submitted May 11, 2020 (ECF No. 26).

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