UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 14-02521 JGB (SPx)**	Date	October 23, 2018
Title	***Lawrence Weinstein v. Mortgage Contracting Services, LLC***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING Plaintiff's Motion for Attorney Fees (Dkt. No. 85); and (2) GRANTING Plaintiff's Motion for Final Approval of Class Settlement (Dkt. No. 88)

On July 23, 2018, Plaintiff Lawrence Weinstein ("Plaintiff") filed a Motion for Final Approval of Class Settlement. ("MFACS," Dkt. No. 88.) On June 5, 2018, Plaintiff filed a Motion for Attorney Fees. ("MAF," Dkt. No. 85.) These matters are unopposed. The Court held a hearing on these matters on August 20, 2018. Upon consideration of the papers filed in support of these motions, as well as oral arguments presented by the parties, the Court GRANTS Plaintiff's MFACS and GRANTS Plaintiff's MAF.

I. BACKGROUND

On February 4, 2014, Plaintiff filed a complaint in the Superior Court of the County of San Bernardino on behalf of himself and others similarly situated. ("Complaint," Dkt. 6-1.) On December 8, 2014, Defendant Mortgage Contracting Services, LLC ("Defendant" or "MCS") removed this action to this Court. (Dkt. No. 1.) On May 17, 2016, Defendant filed a motion for summary judgment. (Dkt. No. 41.) The Court denied the motion for summary judgment on November 17, 2016. (Dkt. No. 65.) On February 8, 2018, the Court granted preliminary approval of this class action settlement and granted conditional certification of the proposed settlement class. ("Preliminary Approval Order," Dkt. No. 82.) In the Preliminary Approval Order, the Court ordered:

1. The Settlement Agreement is preliminarily approved as fair, reasonable, and adequate for members of the settlement class.
2. The following settlement class is certified for settlement purposes only: All persons who performed residential home inspections in California at the direct or indirect request of Mortgage Contracting Services, LLC at any time from February 4, 2010 through the date the Court grants preliminary approval of the settlement.
3. Dennis Moss, Jeremy Bollinger, and Ari Moss of Moss Bollinger, LLP and Samuel Deskin of Deskin Law Firm are appointed as class counsel for the purposes of settlement only.
4. Plaintiff Lawrence Weintstein is qualified to act as representative of the settlement class and is preliminarily appointed class representative.
5. Phoenix Class Action Administration Solutions is appointed as the settlement administrator.
6. The settlement notice, as set forth in Exhibit 2 to the Settlement Agreement, is approved in form and substance for use in the administration of the Settlement Agreement.
7. Phoenix Class Action Administration Solutions is directed to mail the notice packet to all individuals entitled to receive notice.
8. Settlement class members will have 60 days from the initial mailing of the notice packet to file a claim, opt-out, or file an objection to the Settlement.
9. The final approval hearing will be scheduled for a date to be determined by the parties in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division located at 3470 12th Street, Riverside, California 92501.

(Id. at 17–18.)

II. THE SETTLEMENT AGREEMENT

Plaintiff submitted a copy of the parties' proposed Settlement Agreement as Exhibit A to the Declaration of Dennis F. Moss, Plaintiff's Counsel. ("Settlement Agreement," Dkt. No. 81–1.) The terms of the Settlement Agreement are discussed below.

A. Settlement Class

The settlement class for the purposes of the settlement of this case includes: "all persons who performed residential home inspections in California at the direct or indirect request of MCS ('Inspections') at any time from February 4, 2010 through the date the Court grants preliminary approval of the settlement." ("Settlement Class," Settlement Agreement at 2–3.)

B. Financial Terms

The parties agree Defendant shall pay a maximum gross settlement amount of $4,000,000.00. (Id. at 16.)

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1. Settlement Class Members

The claims administrator will calculate individual settlement payments to class members from the adjusted gross settlement based on the following formula. (Id. at 19.)

> The Adjusted Gross Fund value shall equal the amount remaining in the gross settlement amount after deducting the Fixed Payments [outlined below]. This shall be a claims-made settlement, with claims being paid to Qualified Claimants from the Adjusted Gross Fund Value. Any payments made to Qualified Claimants shall be made from the Adjusted Gross Fund Value on a claims-made basis only according to the following formula: Adjusted Gross Fund Value divided by the total of the number of inspections performed in California during the class period by MCS to class members, including, but not limited to, all inspections attributed to class members in claim forms, and any additional inspections credited to Qualified Claimants based on information and records submitted during the claims period . . . ("Inspection Payment Rate") multiplied by the number of inspections performed in California during the class period credited by MCS to the individual class member at issue, less applicable withholdings ("Individual Settlement Payment"). To the extent that less than 55% of the gross fund value is paid as Fixed Payments and/or Individual Settlement Payments, Qualified Claimants submitting valid claims shall be entitled to an increase in their Individual Settlement Payment up to a maximum of 135% of the Individual Settlement Payment to which they would otherwise be entitled ("Increased Individual Payments"); but in no case shall any Increased Individual Payments require payment of more than 55% of the gross fund value. If the Fixed Payments and/or Individual Settlement Payments, taking into account any and all Increased Individual Payments, still equal less than 55% of the Gross Fund Value, the difference between (i) the sum of the Fixed Payments and Individual Settlement Payments (or Increased Individual Payments) and (ii) 55% of the Gross Fund Value (i.e., $2,200,000.00) shall be the "Residual Amount." The Residual Amount, if any, shall be distributed to Bet Tzedek, a 501(c)(3) charity ("Cy Pres") selected by MCS and approved by Plaintiff's Counsel.

(Id. at 18–19.)

2. Class Representative

The Settlement Agreement provides for an incentive award of up to $20,000 from the gross settlement amount to the class representative. (Id. at 17.)

3. Private Attorneys General Act ("PAGA")

The Settlement Agreement allocates $25,000.00 for satisfaction of any and all claims for penalties under the Private Attorneys General Act ("PAGA"). (Id. at 17.) Seventy-five percent of such amount shall be paid to Labor and Workforce Development Agency ("LWDA") and

twenty-five percent shall be paid in equal shares to qualified claimants as part of the adjusted gross fund value. (Id.)

4. Settlement Administration Costs

In the Settlement Agreement, Plaintiff estimates both $30,000 and $108,484 as administration costs. (Id.) In Dennis Moss's Declaration, he rounds the administration costs to $108,500.

5. Attorneys' Fees and Costs

Defendant agrees no to oppose Class Counsel's application for fees up to $1,000,000.00 and costs up to $30,000. (Settlement Agreement at 16–17.)

C. Release

All settlement class members agree to release their claims as follows:

> Upon the Effective Date, all Class Members, including Qualified Claimants and those Class Members who do not return a valid Claim Form and do not return a valid Request for Exclusion within the Claims Period and thus do not receive their Settlement Payment allocation, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all Released Claims against the Released Parties as set forth in this Joint Stipulation.

(Id. at 32.) The Settlement Agreement defines "released class member claims" as follows:

> [T]he claims released by Plaintiff, and each Class Member who do not timely opt out of settlement. Plaintiff, and each Class Member who does not timely opt out of settlement on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge the Released Parties[1] from, which are all applicable California wage and hour claims, rights, demands, liabilities and causes of action of every nature and description whether known or unknown, arising from or related to the claims litigated in the Weinstein matter or that could have been asserted based on the facts alleged in the Weinstein matter against MCS, including but not limited to claims for: violations of

[1] The Settlement Agreement defines released parties to mean "MCS/Defendant and its former and present parents, subsidiaries, affiliated corporations and entities, clients, and vendors and independent contractors through which MCS conducts business, and each of their respective current, former and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, or legal representatives." (Settlement Agreement at 9.)

> California Labor Code §§ 226.7, 226.8, 510, 512, 558, 1197, 2753, or 2802; failure to pay all wages in a timely manner in violation of California Labor Code §§ 200, 201, 202, 203, 204, 210; failure to provide accurate wage statements in violation of California Labor Code § 226; unfair competition; violations of the California Labor Code Private Attorneys General Act, Labor Code § 2698 et seq.; claims under California Business & Professions Code §§ 17000 and 17200, et seq.; and any damages, penalties, restitution, disgorgement, interest or attorneys' fees as a result thereof.

(Id. at 8-9.) The Settlement Agreement contains a release as to all settlement class members, including the class representative, releasing the released parties from any and all released class members claims. (Id. at 14.) As of the effective date,[2] each class member agrees not to sue or otherwise make a claim against any of the released parties for the released class member claims, as defined above. (Id.)

The Settlement Agreement further provides the release of additional claims and rights by the class representative. It provides:

> "Class Representative Released Claims" means claims released by Plaintiff, on behalf of Plaintiff, Plaintiff's heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which Plaintiff has a controlling ownership interest, which are any and all claims of any nature, known or unknown, contingent or accrued, against all Released Parties, whether in tort, contract or equity, including but not limited to the Released Claims, and any claims arising out of or relating to any Inspections prior to the Final Judgment.
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> "Class Representative Release of Claims" means a general release, on behalf of Plaintiff, Plaintiff's heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which Plaintiff has a controlling ownership interest, releasing any and all claims of any nature, known or unknown,

[2] The Settlement Agreement defines the effective date as the date upon which final approval of the settlement can no longer be appealed by an objector in the event of an objection, or in the absence of any objections (or if all objections are withdrawn with Court approval prior to final approval) the final approval date. If objections are heard by the Court and overruled, and no appeal is taken of the judgment by an objector, then the effective date will be 35 calendar days after the entry of judgment. If any appeal is taken from the Court's overruling of any objections to the settlement, then the effective date will be 10 calendar days after all appeals are withdrawn or after an appellate decision affirming the final approval order and judgment becomes final. However, Defendant shall not be required to fund any portion of the total settlement amount and the claims administrator shall not distribute or pay any monies, unless and until all such appeals have been finally resolved or dismissed with prejudice, and the judgment is final and enforceable. (Settlement Agreement at 4.)

> contingent or accrued, against all Released Parties, whether in tort, contract or equity, including but not limited to Released Claims, and any claims arising out of or relating to any Inspections performed by Plaintiff and/or Plaintiff's engagement to perform any inspections.

(Id. at 3, 14–15.)

D. Notice

The Settlement Agreement proposes the following procedure to notify the class members of the Settlement Agreement. (Id. at 27–29.) Within 70 calendar days after the Court entered an Order granting preliminary approval of the settlement, the claims administrator was to send via United States First Class Mail the settlement documents, consisting of the notice of class action settlement ("Notice"), a claim form, a W-9 and W-4 form (collectively, "Notice Packet"). (Id. at 27.) The Notice provides that class members will have 60 calendar days from the date the Notice is mailed to return the claim form with or without challenging the allocation of inspections, return the request for exclusion, or object to the settlement. (Id.) At the same time, the administrator was to email the class members for whom it only has an email address and advise such individuals how to obtain a Notice Packet. (Id. at 27–28.) The costs of this notice procedure is considered part of the administration costs and was paid from the gross settlement amount. (Id. at 28.) In the event that subsequent that the Notice Packet is returned to the claims administrator by the United States Postal Service with a forwarding address for the recipient, the claims administrator was to re-mail the Notice Packet to that address within five business days. (Id.) In the event that the Notice Packet is returned to the claims administrator because the address of the recipient is no longer valid, the claims administrator was to engage in reasonable address search measures in an effort to ascertain the current address of the particular class member in question. (Id.)

E. Performance of the Settlement Agreement

The claims administrator received information for 1,131 class members. ("Kruckenberg Declaration," Dkt. No. 88-2 ¶ 7.) As of July 23, 2018, the claims administrator received a total of 317 timely claims, which equates to approximately 27.97% of number of class members for whom the claims administrator had contact information. (Id. ¶ 17.) Approximately 38.32% of the net settlement fund has been claimed. (Id.) The claims administrator has not received any requests for exclusion or objections. (Id. ¶¶ 19–20.)

F. Class Action Fairness Act ("CAFA")

When settlement is reached in certain class action cases, CAFA requires as follows:

> Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement]

> upon the appropriate State official of each State in which a class member resides and the appropriate Federal official. . . .

28 U.S.C. § 1715(b).

The statute provides detailed requirements for the contents of such a notice. Id. A court is precluded from granting final approval of a class action settlement until the notice requirement is met:

> An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].

28 U.S.C. § 1715(d).

Here, Defendant filed a Notice of Compliance with CAFA's requirements. (Dkt. No. 90.) Defendant states that it provided "notice of the settlement of this action to all appropriate Federal and state officials." (Id.) With that representation, the Court finds that the notice requirements of 28 U.S.C. § 1715 have been satisfied.

III. LEGAL STANDARD

A. Class Action Settlement

Class action settlements must be approved by the Court. See Fed. R. Civ. P. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). A strong judicial policy favors settlement of class actions. See id.

Nevertheless, the Court must examine the settlement as a whole for overall fairness. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor appellate courts have the power to delete, modify, or substitute provisions in the negotiated settlement agreement. See id. "The settlement must stand or fall in its entirety." Id.

In order to approve the class action settlement herein, the Court must conduct a three-step inquiry. See Adoma v. Univ. of Phoenix, Inc., 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). First, it assesses whether the parties have met notice requirements under the Class Action Fairness Act. Id. Next, it determines whether the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B) have been satisfied. Id. Finally, the Court must find that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(3). Id.

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B. Attorneys' Fees

The procedure for requesting attorneys' fees is set forth in Rule 54(d)(2). While the rule specifies requests shall be made by motion "unless the substantive law governing the action provides for the recovery of . . . fees as an element of damages to be proved at trial," the rule does not itself authorize the awarding of fees. "Rather, [Rule 54(d)(2)] and the accompanying advisory committee comment recognize that there must be another source of authority for such an award . . . [in order to] give[ ] effect to the 'American Rule' that each party must bear its own attorneys' fees in the absence of a rule, statute or contract authorizing such an award." MRO Commc'ns, Inc. v. AT&T, 197 F.3d 1276, 1281 (9th Cir. 1999).

In class actions, statutory provisions and the common fund exception to the "American Rule" provide the authority for awarding attorneys' fees. See Alba Conte and Herbert B. Newberg, Newberg on Class Actions, § 14.1 (4th ed. 2005) ("Two significant exceptions [to the "American Rule"] are statutory fee-shifting provisions and the equitable common-fund doctrine"). Rule 23(h) authorizes a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h). Under normal circumstances, once it is established that a party is entitled to attorneys' fees, "[i]t remains for the district court to determine what fee is 'reasonable.'" Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

IV. RULE 23 REQUIREMENTS

A. Rule 23(a) and (b)

In its Preliminary Approval Order, the Court certified the Settlement Class in this matter under Rules 23(a) and 23(b)(3). (Preliminary Approval Order at 2–5.) Accordingly, the Court "need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b)." Adoma, 913 F. Supp. 2d at 974; see also Harris v. Vector Marketing, No. C–08–5198, 2012 WL 381202 at *3 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable."); In re Apollo Group Inc. Securities Litigation, Nos. CV 04–2147–PHX–JAT, CV 04–2204–PHX–JAT, CV 04–2334–PHX–JAT, 2012 WL 1378677 at *4 (D. Ariz. Apr. 20, 2012). Here, the Settlement Class has not changed since it was conditionally certified. All the criteria for class certification remain satisfied, and the Court hereby confirms its order certifying the Settlement Class.

B. Rule 23(c)(2) Notice Requirements

Rule 23(c)(2)(B) requires the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires a proposed settlement may only be approved after notice is directed in a reasonable

manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). In its Preliminary Approval Order, the Court approved the notice sent to Settlement Class members. The claims administrator timely mailed the Notice Packet. (Kruckenberg Declaration ¶¶ 7–10.) The Court therefore finds that notice to the Settlement Class was adequate.

C. Rule 23(e)

Under Rule 23(e), "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). The Court's inquiry is procedural in nature. Id. Pursuant to Rule 23(e)(2), "[i]f the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court held a final approval hearing on August 20, 2018. In determining whether a settlement agreement is fair, adequate, and reasonable to all concerned, the Court may consider some or all of the following factors:

(1) the strength of the plaintiff's case;

(2) the risk, expense, complexity, and likely duration of further litigation;

(3) the risk of maintaining class action status throughout the trial;

(4) the amount offered in settlement;

(5) the extent of discovery completed, and the stage of the proceedings;

(6) the experience and views of counsel;

(7) the presence of a governmental participant; and

(8) any opposition by class members.

Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998). This list of factors is not exclusive and a court may balance and weigh different factors depending on the circumstances of each case. See Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

1. Strength of Plaintiff's Case

The initial fairness factor addresses Plaintiffs' likelihood of success on the merits. See Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 964–65 (9th Cir. 2009). In determining the probability of Plaintiffs' success on the merits, there is no "particular formula by which that outcome must be tested." Id. at 965.

Here, Plaintiff survived Defendant's motion for summary judgment. (Dkt. No. 65.) However, Plaintiff recognizes Defendant has factual defenses which present obstacles to prevailing on a contested class certification motion. (MFACS at 23.) Specifically, Defendant might argue that it did not employ the class members, and that class members' damages claims are not appropriate because they received piecework compensation and often worked for multiple inspection companies simultaneously. (Id.)

Given the challenges that could potentially be faced in continued litigation over such issues, the Court finds this factor weighs in favor of approval. See Barbosa v. Cargill Meat Solutions Corp., 1:11-CV-00275-SKO, 2013 WL 3340939, at *12 (E.D. Cal. July 2, 2013) ("Plaintiffs' likelihood of success appears to have been properly accounted for in the settlement amount.")

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

In assessing the risk, expense, complexity, and likely duration of further litigation, the Court evaluates the time and cost required. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 3 Newberg on Class Actions § 11:50 (4th ed. 2012)).

Here, without the settlement, the parties would continue litigating the class certification issue as well as the ultimate merits of the case – a long, complex, and expensive process. Therefore, the settlement avoided further protracted and expensive litigation. Accordingly, the Court finds this factor weights in favor of settlement approval.

3. Risk of Maintaining Class Action Status Throughout the Trial

Because the Court is not aware of any risks to maintaining class-action status throughout trial, this factor is neutral. Barbosa, 2013 WL 3340939 at *13; see also In re Veritas Software Corp. Sec. Litig., No. 03–0283, 2005 WL 3096079, at *5 (N.D. Cal. Nov. 15, 2005) (vacated in part on other grounds, 496 F.3d 962 (9th Cir. 2007)) (favoring neither approval nor disapproval of settlement where the court was "unaware of any risk involved in maintaining class action status"); Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (finding that there were no facts that would defeat class treatment, the factor was considered "neutral" for purposes of final approval of class settlement).

4. Amount Offered in Settlement

Through mediation, Plaintiff projected the following total damages:

- $3,778,707: Projected unpaid minimum wages
- $477,936: Unpaid overtime
- $2,265,075: Unpaid rest break premium pay

- $6,372,480: Unpaid reimbursements (not including interest)

(MFACS at 28–29.) The above amounts total just under $13,000,000.00. With interest, the amount would total in excess of $17,000,000.00. (Id. at 29.) The settlement amount, $4,000,000.00, is a little less than one-fourth the potential recovery, which, considering the challenges and uncertainties of the case, is fair and adequate. Given the potential defenses Defendants could put forward, including an argument against class certification, the Court finds this amount offered here to be appropriate.

5. Extent of Discovery Completed and Stage of the Proceedings

This factor requires the Court evaluate whether "the parties have sufficient information to make an informed decision about settlement." Linney, 151 F.3d at 1239.

Plaintiff represents he served and responded to extensive discovery. (MFACS at 8–9.) Defendant propounded on Plaintiff interrogatories, requests for production of documents, and requests for admissions. (Id.) The parties also participated in a mediation session which did not yield an immediate resolution of Plaintiff's claims against Defendant. (Id. at 10.) Based on the review of the documents produced in this case, written discovery, and the information Defendant provided prior to and after mediation, the parties believe they have enough evidence to evaluate the strength and weaknesses of the case. (Id. at 24.) The Court agrees. Accordingly, this factor favors approval.

6. Experience and Views of Counsel

In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties. See DIRECTV, Inc., 221 F.R.D. at 528 ("Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation[.]") (internal quotation marks and citations omitted). This reliance is predicated on the fact that "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995).

Class Counsel has extensive experience serving as class counsel in wage and hour litigation actions in federal and state court. (See "Moss Declaration," Dkt. No. 88-1 ¶ 49.) Class Counsel believe, on balance, the settlement is fair, reasonable, and adequate, representing a good result for the class after handicapping the likely odds of prevailing both on class certification and on the merits. (MFACS at 25.) As a result, the experience and views of Class Counsel also weigh in favor of final approval.

7. Presence of a Governmental Participant

No governmental entity is present in this litigation. Therefore this factor favors approval.

8. Opposition by Class Members

No class member has opposed the settlement. This factor favors approval.

D. Attorneys' Fees and Costs

1. Fees

Class Counsel also requests approval of its request for attorneys' fees. Courts are obliged to ensure the attorneys' fees awarded in a class action settlement are reasonable, even if the parties have already agreed on the amount. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011.) "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." In re Bluetooth, 654 F.3d at 942. "[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." In re Bluetooth, 654 F.3d at 942 (quoting Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)).

A court may exercise discretion to award attorneys' fees in a class action settlement by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69–70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation, Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028–29 (9th Cir. 2000).[3] Under the percentage-of-the-fund method, an award of twenty-five percent of the gross settlement amount is the "benchmark" for attorneys' fees calculations. Powers v. Eichen, 229 F.3d 1249, 1256-57 (9th Cir. 2000).

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[3] In Kerr, the Ninth Circuit adopted the 12–factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), which identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.

To determine whether the percentage requested is reasonable, courts may examine several factors, including:

> [T]he extent to which class counsel achieved the results for the class, whether the case was risky for class counsel, whether counsel's performance generated benefits beyond the cash settlement fund, the market rate for the particular field of law (in some circumstances), the burden class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 954-55 (9th Cir. 2015) (internal quotation mark omitted). The Ninth Circuit has allowed courts to award attorney's fees using the percentage method "in lieu of the often more time-consuming task of calculating the lodestar." Bluetooth, 654 F.3d at 942.

Here, Class Counsel seeks 25% ($1 million) of the general common fund ($4 million). (MAF at 15.) The Court has considered the results achieved and the risk of litigation (e.g., the pending motion for class certification), as well as the skill required and worked performed to litigate this case. Class Counsel obtained a Settlement that confers a significant benefit to the Class, particularly in light of the risks involved in litigation. The Net Settlement available to the class totals approximately $2,823,500, or an average settlement share of approximately $1,568 per class member based on a class size of 1800. (Id. at 16.)

In addition, the Court took into account the contingent nature of the fee and financial burden on counsel as well as awards made in similar cases. These factors, the Court finds, justify an award of 25% or $1 million in attorneys' fees.

The Court now turns to the lodestar method as a means of cross-checking the 25% award requested. Counsel's work on the case, at this time, amounts to $468,452 and a total of approximately 663.75 hours. (Id. at 21.) However, Counsel represents that they will have to spend additional time going forward. (Id.) Thus, the requested fee ($1 million) represents a lodestar multiplier of 2.14. In Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050-51 (9th Cir. 2002), the Ninth Circuit held the district court did not abuse its discretion when it approved attorney's fees after applying the lodestar method as a cross-check of the percentage method. The attorney's fees resulted in a of 3.65 lodestar multiplier in Vizcaino, which the Ninth Circuit upheld as "appropriate." Id. at 1051.

Here, Plaintiff's Counsel billed at an hourly rate ranging from $450-$750. (Moss Declaration ¶ 4.) Dennis Moss billed $750/hour. Jeremy Bollinger billed $625/hour. Samuel Deskin billed $500/hour. Ari Moss billed $625/hour. Evan Selik billed $450/hour. The Court, having reviewed the experience of the respective attorneys, finds the amount billed per hour to be reasonable. See Youngevity Int'l, Corp. v. Smith, No. 16-CV-00704-BTM-JLB, 2018 WL 2113238, at *5 (S.D. Cal. May 7, 2018) (citations omitted) ("Courts in this district have held a

range of rates from $450-750 per hour reasonable for a senior partner in a variety of litigation contexts and specialties.") For instance, Dennis Moss has been an employment/labor attorney since 1977 and has handled numerous federal and state wage and hour class action cases. (Moss Declaration ¶ 28.) Jeremy Bollinger and Ari Moss are founding partners of Moss Bollinger and both were admitted to the Bar in 2005. (Id. ¶¶ 29–30.) Selik has practiced law in California for 10 years. (Id. ¶ 31.) As for Sam Deskin, his hourly rate is $500, but Class Counsel provides no information about his professional background (e.g., when he was admitted to the Bar or how long he has practiced law), and thus the Court cannot determine the reasonableness of his rate. (See id. ¶ 32.) Considering the complexity of the case, the risks involved and the length of litigation (the class was removed in 2014), the Court finds this multiplier (2.14) to be appropriate.

2. Costs

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h); see Trans Container Servs. v. Sec. Forwarders, Inc., 752 F.2d 483, 488 (9th Cir. 1985). "Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable." Rutti v. Lojack Corp., Inc., No. SACV 06–350 DOC (JCx), 2012 WL 3151077, at *12 (C.D. Cal. July 31, 2012).

Class counsel requests $20,175.40 in costs. (MAF at 24.) Class counsel provides an itemized breakdown of the expenses in this case, which deposition and mediation fees, filing fees, and postage. (Moss Declaration, Exh. C.) All of these expenses are typically recoverable in litigation. Cf. In re Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding similar categories of expenses reasonable in a class action settlement). The Court therefore APPROVES the requested amount for costs.

E. Incentive Awards

The trial court has discretion to award incentives to the class representatives. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000); Pelletz, 592 F. Supp. 2d at 1329. The criteria courts have used in considering the propriety and amount of an incentive award include: (1) the risk to the class representative in commencing a class action, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort invested by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class representative. Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The Settlement Agreement provides for a $20,000 payment for the named Plaintiff. (Settlement Agreement at 17.) In the Preliminary Approval Order, the Court stated Plaintiff "should be prepared to discuss and justify the disproportionate incentive award." (Preliminary Approval Order at 16.) In his MAF Plaintiff states he was an active participant throughout the litigation, and that sat for a deposition and analyzed evidence. (MAF at 25.) Plaintiff also states

that the average individual recovery will be between $1,559.75 and $2,105.66. (Id.) Despite Plaintiff's arguments, the Court still finds the incentive award excessive. Given the length of this litigation and Plaintiff's extensive involvement, the Court AWARDS $15,000 to Plaintiff Weinstein. This award represents the high end of the Court's typical incentive awards.

V. CONCLUSION

For the reasons stated above, the Court:

1. GRANTS final approval of the Settlement Agreement;
2. AWARDS Class Counsel attorneys' fees in the amount of $1,000,000.00
3. AWARDS Class Counsel costs in the amount of $20,175.40
4. AWARDS $15,000 to Plaintiff Weinstein
5. ORDERS the payment of $18,750 to the California Labor and Workforce Development Agency;
6. ORDERS the payment of $108,484 to the claims administrator; and
7. DISMISSES the Complaint WITH PREJUDICE.

The Court ORDERS such judgment be entered.

IT IS SO ORDERED.