

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	16-CV-9187-PSG (KSx)	Date	August 27, 2018
Title	Jeremey Edwards v. Chartwell Staffing Services, Inc., et al		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
	Wendy Hernandez		Not Reported
	Deputy Clerk		Court Reporter
Attorneys Present for Plaintiff(s):		Attorneys Present for Defendant(s):	
Not Present		Not Present	

Proceedings (In Chambers): The Court GRANTS Plaintiff’s motion for final approval of class settlement and award of attorneys’ fees, costs, and settlement award

Before the Court are Plaintiff Jeremy Edwards’ (“Plaintiff”) motions for final approval of class action settlement and for attorneys’ fees and costs. Dkts. # 56, *Motion for Final Approval of Class Action Settlement* (“*Mot.*”), 57, *Motion for Attorneys’ Fees, Costs, and Service Award* (“*Fees Mot.*”). The Court held a final fairness hearing in this matter on August 27, 2018. Having considered the arguments in all of the submissions, the Court **GRANTS** Plaintiff’s motions.

I. Background

Chartwell Staffing Services, Inc. (“Chartwell” or “Defendant”) is a national employment staffing agency which provides temporary, temporary to hire, direct hire, and other staffing services to manufacturers and businesses. See *Declaration of Matthew J. Matern*, Dkt. # 48-1 (“*Matern Decl. Preliminary*”), ¶ 7. Cross-Defendant Avalon Food Packing (“Avalon”) is a fresh food processing and packaging plant and cold storage facility located in Los Angeles, California. *Id.* Chartwell provided employees to work at the Avalon during the time period from approximately February 23, 2015 to approximately June 30, 2017. *Motion for Preliminary Approval of Class Settlement*, Dkt. # 48 (“*Preliminary Mot.*”), 5. Plaintiff was hired by Chartwell and worked at the Avalon facility from June 2015 to approximately October 2015. *Id.* 4.

Plaintiff brought this action as a wage-and-hour class action on behalf of himself and all other persons who work or have worked as non-exempt employees of Defendants at the Avalon facility at any time (“Class” or “Class Members”) during the period from December 12, 2012 through the date the Court grants preliminary approval (the “Class Period”). *Id.* 1. Plaintiff

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asserted claims for: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged and Quitting Employees; (6) Failure to Maintain Required Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8) Unfair and Unlawful Business Practices; (9) Penalties under the Labor Code Private Attorneys General Act; and (10) Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor Standards Act. *Id.* 2-3.

The parties ultimately reached a settlement of all claims that provides for an \$800,000 gross settlement amount to resolve the released claims of Plaintiff and Class Members. Plaintiff now moves for final approval of the Settlement Agreement, certification of the proposed settlement class, approval of the Class Notice distributed to Class Members, and for an order awarding attorney's fees and costs, settlement administrator's expenses, and an incentive award. *See generally Mot.; Fees Mot.*

The Court granted Plaintiff's motion for Preliminary Approval of the Settlement Agreement on April 9, 2018. *See Order Granting Preliminary Approval of Class Action Settlement*, Dkt. # 54 ("*Preliminary Approval Order*").

A. Proposed Settlement Agreement

The Settlement Agreement provides for a gross settlement in the amount of \$800,000 ("*Gross Settlement*"). *Mot.* 6. The Gross Settlement amount funds: (1) settlement awards to participating Class Members; (2) attorneys' fees totaling \$266,666, or one-third (33 1/3%) of the settlement amount; (3) settlement administration costs of \$34,000; (4) the class representative service award in an amount not to exceed \$10,000; and (5) \$46,666.67 in PAGA civil penalties, of which \$35,000 will go to the California Labor and Workforce Development Agency ("*LWDA*"). *Id.* 6-8. The employer's share of payroll taxes will be paid by Defendant in addition to the Gross Settlement. *Id.* 8.

The average Class Member recovery is estimated to be \$392.84, and the maximum individual payment is estimated to be \$3,620.38. *Fees Mot.* 8.

Any uncashed checks will, after 120 days of their issuance, result in distribution to a *cy pres* recipient. In its Preliminary Approval Order, the Court ordered the parties to select a new *cy pres* recipient and explain how it related to the underlying action. *See Preliminary Approval Order* at 14. The parties have now designated a nonprofit legal organization called Legal Aid at Work, whose main purpose is to combat wage theft and "educate workers about their wage-and-

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hour rights . . . [and] protect workers from unlawful practices by providing them with the tools to advocate on their own behalf.” *Mot.* 20.

The Settlement Agreement also contemplates a release by all participating Class Members of claims arising out of Class Members’ employment at the facility located at 2501 W. Rosecrans Avenue, Los Angeles, California 90059 during the Class Period. *Id.* 9. Only Class Members who timely cash their settlement award checks will be deemed to have opted in to the release of the Released Claims. *Id.* 9.

B. Class Certification for Settlement Purposes

The Court granted preliminary approval of the Settlement Agreement and its terms, as well as the proposed Notice of Class Action Settlement (“Class Notice”), on April 9, 2018. *See Preliminary Approval Order.* In its Order, the Court certified, for settlement purposes only, a Rule 23(b)(3) class of:

All persons who work or have worked as non-exempt employees of Defendants at the Avalon Facility located at 2501 Rosecrans Avenue, Los Angeles, California 90059 at any time during the Class Period.

Id. at 2.

II. Discussion

A. Final Approval

i. Legal Standard

A court may finally approve a class action settlement “only after a hearing and on finding that the settlement . . . is fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2). In determining whether a settlement is fair, reasonable, and adequate, the district court must “balance a number of factors: the strength of the Plaintiffs’ case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of proceedings; the experience and views of counsel; the presence of a government participant; and the reaction of the Class Members to the proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir.

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2003); *Officers for Justice v. Civil Serv. Comm'n of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is “by no means an exhaustive list”).

The district court must approve or reject the settlement as a whole. *See Hanlon*, 150 F.3d at 1026 (“It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness.”). The Court may not delete, modify, or rewrite particular provisions of the settlement. *Id.* The district court is cognizant that the settlement “is the offspring of compromise; the question . . . is not whether the final product could be prettier, smarter, or snazzier, but whether it is fair, adequate and free from collusion.” *Id.* The Ninth Circuit has noted that “there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.” *In re Synacor ERISA Litig.*, 516 F.3d 1095, 1011 (9th Cir. 2008).

ii. *Discussion*

a. *Strength of Plaintiff's Case*

“An important consideration in judging the reasonableness of a settlement is the strength of Plaintiffs’ case on the merits balanced against the amount offered in the settlement.” *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 488 (C.D. Cal. 2010) (internal quotation marks omitted). This factor is generally satisfied when plaintiffs must overcome barriers to make their case. *Chun–Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D. Cal. 2010).

Here, Defendants “intended to vigorously contest the merits of Plaintiff’s claims, as well as Plaintiff’s ability to pursue this action on a class-wide basis.” *Mot.* 13. The settlement also takes into account “the difficulty in establishing damages” if Plaintiff did obtain certification and establish liability. *Id.*

Given the above considerations, the Court agrees with Plaintiff that this factor weighs in favor of approving the Settlement Agreement.

b. *Risk, Expense, Complexity, and Duration of Further Litigation*

The second factor in assessing the fairness of the proposed settlement is the complexity, expense, and likely duration of the lawsuit if the parties had not reached a settlement agreement. *Officers for Justice*, 688 F.2d at 625. This litigation has already been underway for more than two years and, if the case were to go on trial as a class action, the fees and costs would increase

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exponentially. *Mot.* 14. “Absent settlement, the next steps in the case would include Plaintiff’s motion for class certification, a possible defense motion for summary judgment, expert discovery, trial preparation, and trial.” *Id.* The Settlement significantly minimizes the delay and costs that litigation would entail. The Court agrees with Plaintiff that this factor also weighs in favor of approving the settlement.

c. Risk of Maintaining Class Action Status Through Trial

Although the Court has preliminarily certified the class, the certification was for settlement purposes only. *Preliminary Approval Order* at 2. Under Federal Rule of Civil Procedure 23(c)(1)(C), an “order that grants or denies class certification may be altered or amended before the final judgment.” Fed. R. Civ. P. 23(c)(1)(C). Because Defendants has already indicated it may vigorously contest class certification should this case proceed to trial, and because they “would most certainly appeal, threatening a reversal of any favorable outcome and causing significant delays in obtaining any relief for Class Members,” this factor favors final approval of the Settlement Agreement. *See Mot.* 14.

d. Amount Offered in Settlement

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624. The Ninth Circuit has explained that “it is the very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625 (citations omitted). Rather, any analysis of a fair settlement amount must account for the risks of further litigation and trial, as well as expenses and delays associated with continued litigation.

The Court is satisfied that the ultimate settlement amount of \$800,000 is reasonable considering the circumstances of the case. The Court considered the parties’ respective opinions regarding the value and merits of this case during the preliminary approval stage and continues to find that this amount is reasonable in light of the challenges described above. *Aarons v. BMW of N. Amer., LLC*, No. CV 11–7667 PSG (CWx), 2014 WL 4090564, at *11 (C.D. Cal. Apr. 29, 2014) (noting that while settlements will not make most Class Members completely whole, Class Members will “discount their claims to obtain a certain and timely recovery, rather than bear the significant risk and delay associated with further litigation”).

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Here, the total payment to Net Settlement is \$431,333.33 and the average individual settlement award will be \$392.84. *Mot.* 13, 16. Based on payroll and class data provided by Defendants and Plaintiff's assessment of the likelihood of their success on each claim, Plaintiffs estimate a maximum damages award of as much as \$4,603,145 if the case proceeded to trial. *Mot.* 16. Considering that the risks of obtaining and maintaining class certification and establishing liability and damages, the Court finds the settlement amount fair. *See Notice of Removal*, Dkt #1, ¶25; *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 456, 458 (9th Cir. 2000) (comparing a nearly \$2 million gross settlement payment to a potential recovery figure of \$12 million and finding that recovering "roughly one-sixth of the potential recovery" was fair and adequate under the circumstances of the case); *Glass v. UBS Fin. Servs.*, No. C-06-4068 MMC, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007) (approving a settlement amount that constituted approximately 25 percent of the amount plaintiffs might have proved at trial).

Therefore, in light of the results achieved and the uncertainties associated with litigating this case through trial, the Court finds that this factor too counsels in favor of approving the settlement.

e. The Extent of Discovery and the Stage of the Proceedings

This factor requires the Court to gauge whether Plaintiff has sufficient information to make an informed decision about the merits of their case. *See In re Mego*, 213 F.3d at 459. The more discovery that has been completed, the more likely it is that the parties have "a clear view of the strengths and weaknesses of their cases." *Young v. Polo Retail, LLC*, 2007, No. C-02-4546 VRW, WL 951821, at *4 (N.D. Cal. Mar. 28, 2007) (internal quotation marks and citations omitted).

Here, the parties engaged in an extensive formal discovery and informal information exchange to enable both sides to assess the claims and potential defenses. *Mot.* 17. The parties were able to accurately assess the legal and factual issues that would arise if the case proceeded to trial, and Class Counsel's discovery and investigation efforts were extensive, as noted in the Court's prior Order. *Id.*

The parties also participated in a good-faith, arms' length mediation and additional conferences with the mediator. *Id.* 19. The Court is confident that Plaintiff had enough information to make an informed decision about the settlement based on the strengths and weaknesses of their case. This factor weighs in favor of granting final approval.

f. The Experience and Views of Class Counsel

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The recommendations of Plaintiff's counsel are given a presumption of reasonableness. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). "Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

Here, Class Counsel are experienced and respected class action litigators, and because of their familiarity with the case's strengths and weaknesses, they state that "the proposed Settlement is fair, reasonable, and adequate." *Mot.* 14. *See also Declaration of Matthew J. Matern*, Dkt. # 56-1, ("*Matern Decl. Final*"), ¶¶ 27-33. This factor thus weighs in favor of final approval.

g. The Presence of a Government Participant

This factor is neutral because there is no government entity participating in the case.

h. Reaction of the Class Members to the Proposed Settlement

In evaluating the fairness, adequacy, and reasonableness of settlement, courts also consider the reaction of the class to the settlement. *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003). "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the Class Members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528–29 (C.D. Cal. 2004); *see also Arnold v. Fitflop USA, LLC*, No. 11–CV–0973 W(KSC), 2014 WL 1670133, at *8 (S.D. Cal. Apr. 28, 2014) (concluding that the reaction to the settlement "presents the most compelling argument favoring settlement").

Here, of the 1,101 individuals identified as potential Class Members, not a single Class Member has objected to the Settlement. *Mot.* 18. Only three Class Members, less than one half of one percent of the Class, requested exclusion. *Id.*

This factor thus weighs in favor of approval.

i. Conclusion

Having reviewed the relevant factors and found that none counsel against approval of final settlement, the Court **GRANTS** Plaintiff's motion for final approval of the class action settlement.

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B. Motions for Attorneys' Fees, Costs, and Incentive Awards

Class Counsel requests that the following be disbursed from the Settlement amount: (1) 33 1/3%, or \$266,666.67, of the Settlement fund for attorneys' fees; (2) reimbursement for litigation expenses in the amount of \$15,683.50¹; and (3) a \$10,000 incentive award for the Named Plaintiff. *Fees Mot.* 1.

i. *Legal Standard*

Awards of attorneys' fees in class action cases are governed by Federal Rule of Civil Procedure 23(h), which provides that after a class has been certified, the Court may award reasonable attorneys' fees and nontaxable costs. The Court "must carefully assess" the reasonableness of the fee award. *See Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003); *see also Browne v. Am. Honda Motor Co., Inc.*, No. CV 09-06750 MMM (DTBx), 2010 WL 9499073, at *3-5 (C.D. Cal. Oct. 5, 2010) (explaining that in a class action case, the court must scrutinize a request for fees when the defendant has agreed to not oppose a certain fee request as part of a settlement).

Where litigation leads to the creation of a common fund, courts can determine the reasonableness of a request for attorneys' fees using either the common fund method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944-45 (9th Cir. 2011) (finding that when a settlement establishes a common fund for the benefit of a class, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method). The Court will analyze Class Counsel's fee request under both theories.

i. *Discussion*a. *Percentage of the Common Fund*

Under the percentage-of-recovery method, courts typically calculate 25 percent of the fund as a "benchmark" for a reasonable fee award. *See In re Bluetooth*, 654 F.3d at 942. When assessing fee awards' reasonableness under the common fund theory, courts consider "(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the

¹ The Court notes that the amount listed in *Fees Mot.* and *Matern Decl. Final* differ by \$20. The Court assumes the amount listed in *Matern Decl. Final*, which contains Class Counsel's expense records, is correct.

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contingent nature of the fee and the financial burden carried by the Plaintiff; and (5) awards made in similar cases.” *In re Omnivision Technologies*, 559 F.Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing *Viscaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002)).

Class Counsel requests that the Court approve an attorneys’ fee award of 33 1/3 percent of the total Settlement amount. *Fees Mot.* 1. Because Plaintiff asks the Court to depart from the “benchmark” of 25 percent, the Court must evaluate each of the five factors set out in *Vizcaino*. *See Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

Turning to the *Viscaino* factors, the Court first finds that the results are favorable to the class, given that the substantial risk inherent in any class action. *Fees Mot.* 8. Second, the Court finds that the risks of litigation were real and substantial, given that even if Plaintiff had been successful at trial, “[r]ecoveries here would inevitably be modest.” *Id.* Third, Class Counsel has provided able representation to Plaintiff, including securing this Settlement. Fourth, Class Counsel has litigated this case on a contingent fee basis, and this too counsels in favor of approving the award. *See id.* 11. Fifth, the request for attorneys’ fees in the amount of 33 1/3 percent falls within the 30 to 33 1/3 percent range allowed in common fund cases. *See, e.g., In re Mego*, 213 F.3d at 463 (upholding district court’s award of 33 1/3 percent of the settlement fund); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. MDL 3:07-md-1827 SI, 2011 WL 7575003, *1 (N.D. Cal. Dec. 27, 2011) (awarding attorneys’ fees in the amount of 30 percent of \$405 million settlement fund); *Knight v. Red Door Salons, Inc.*, No. 08-1520 SC, 2009 WL 248367, at *17 (N.D. Cal. Feb. 2, 2009) (“[N]early all common fund awards range around 30%.”); *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005) (awarding attorneys’ fees in the amount of 33 1/3 percent where “[v]arious issues litigated in this case concerned relatively uncharted territory”).

Given the above considerations, the Court finds Class Counsel’s attorneys’ fees request reasonable under the common fund theory.

b. Lodestar Cross-Check

To determine attorneys’ fees under the lodestar method, a court must multiply the reasonable hours expended by a reasonable hourly rate. *In re Washington Public Power Supply System Securities Litig.*, 19 F.3d 1291, 1294 n.2 (9th Cir. 1994). The Court may then enhance the lodestar with a “multiplier,” if necessary, to arrive at a reasonable fee. *Id.*

1. Reasonable Rate

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The reasonable hourly rate is the rate prevailing in the community for similar work. *See Gonzalez v. City of Maywood*, 729 F.3d 1196, 1200 (9th Cir. 2013) (“[T]he court must compute the fee award using an hourly rate that is based on the prevailing market rates in the relevant community.”) (citations omitted); *Viveros v. Donahue*, 2013 WL 1224848, at *2 (C.D. Cal. Mar. 27, 2013) (“The court determines a reasonable hourly rate by looking to the prevailing market rate in the community for comparable services.”). The relevant community is the community in which the court sits. *See Schwarz v. Sec. of Health & Human Servs.*, 73 F.3d 895, 906 (9th Cir. 1995). If an applicant fails to meet its burden, the court may exercise its discretion to determine reasonable hourly rates based on its experience and knowledge of prevailing rates in the community. *See, e.g., Viveros*, 2013 WL 1224848, at *2; *Ashendorf & Assocs. v. SMI-Hyundai Corp.*, No. CV 11–02398 ODW (PLAx), 2011 WL 3021533, at *3 (C.D. Cal. July 21, 2011); *Bademyan v. Receivable Mgmt. Servs. Corp.*, 2009 WL 605789, at *5 (C.D. Cal. March 9, 2009).

Here, Plaintiff is represented by counsel at Matern Law Group (“Matern”), a Los Angeles firm. Through the declaration of counsel, Matern asserts that the attorneys who worked on this case had hourly rates ranging from \$425 to \$850. *See Declaration of Matthew J. Matern*, Dkt. # 56-1 (“*Matern Decl. Final*”), ¶ 38. They further seek \$225 per hour for a former law clerk. *Id.*

The Court turns to the *Real Rate Report: Lawyer Rates, Trends, and Analysis* (“Real Rate Report”) as a useful guidepost to assess the reasonableness of these hourly rates in the Central District. *See Eksouzian v. Albanese*, NO. CV 13–00728–PSG–MAN, 2015 WL 4720478, at *4–5 (C.D. Cal. Oct. 23, 2015); *Carbajal v. Wells Fargo Bank, N.A.*, No. CV 14–7851 PSG (PLAx), 2015 WL 2454054, at *5 (C.D. Cal. July 29, 2015). As Judge Fisher explained in *Hicks v. Toys ‘R’ Us-Delaware, Inc.*, the Real Rate Report is persuasive because it:

identifies attorney rates by location, experience, firm size, areas of expertise, and industry, as well as the specific practice areas, . . . [and] it is based on actual legal billing, matter information, and paid and processed invoices from more than 80 companies—a much better reflection of true market rates than self-reported rates in all practice areas as part of a national survey of top firms.

No. CV13–1302–DSF (JCGx), 2014 WL 4670896, at *1 (C.D. Cal. Sept. 2, 2014). The 2016 Real Report provides a number of useful data points for assessing the reasonableness of Class Counsel’s attorneys’ fees requests. In Los Angeles, partners have an hourly rate ranging from \$400 to \$847.68 and associates from \$300 to \$595. *See 2016 Real Rate Report* 54. In the practice area of labor and employment law, however, a partner has an average hourly rate

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between \$325 and \$535. *See id.* 51. Similarly situated associates earn an average hourly rate between \$240 and \$432. *See id.* 50.

Accordingly, the Court finds that Matern's hourly rates ranging from \$425 for associates to \$850 for partners to fall within the acceptable range suggested by the Real Rate Report. In sum, the Court finds Class Counsel's hourly rates reasonable because they fall within the range of prevailing rates in the Central District of California for the type of work performed in this case.

2. Reasonable Hours

An attorneys' fees award should include compensation for all hours reasonably expended prosecuting the matter, but "hours that are excessive, redundant, or otherwise unnecessary" should be excluded. *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir. 2012). "[T]he standard is whether a reasonable attorney would have believed the work to be reasonably expended in pursuit of success at the point in time when the work was performed." *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982).

Here, the records demonstrate that Matern's attorneys have to date spent 312.5 total hours of attorney time and 104.49 hours of law clerk time. *Matern Decl. Final* ¶ 38. Class Counsel engaged in extensive discovery and motion practice, reviewed documents, attended mediation, prepared the Settlement Agreement and related papers, and worked extensively with clients and opposing counsel. *See id.* ¶ 39. After reviewing the declarations submitted by Class Counsel and considering the duration, scope, and complexity of this case, the Court finds 312.5 and 104.49 hours reasonable.

3. Multiplier

Class Counsel requests attorneys' fees in an amount of 33 1/3 percent of the Gross Settlement (\$800,000), or \$266,666.67, plus costs and expenses of \$15,683.50. *Fees Mot.* 18. Class Counsel's lodestar is \$213,180.25, with approximately 35 additional hours at an average hourly rate of \$600 to be expended to complete the approval and settlement process. *Matern Decl. Final* ¶ 41. The Court would therefore need to apply a 1.251 multiplier to approve Class Counsel's requested fee award of \$266,666.67, or 33 1/3 percent of the common fund. The Court finds that such a multiplier is appropriate here, where Class Counsel took this case on a contingent basis, faced opposition, and achieved results that represent a significant recovery for the Class. *See Vizcaino*, 290 F.3d at 1043 (finding that multipliers tend to range from 1 to 3 and approving a 3.65 multiplier because litigation was protracted and counsel risked nonpayment);

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In re High-Tech Employee Antitrust Litigation, No. 4D15–448, 2015 WL 5158740, at *10 (N.D. Cal. Sept. 2, 2015) (applying multipliers of 1.5 and 2.2 where class counsel assumed a risk of nonpayment while achieving significant benefits for the class); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 244, 255 (2001) (“Multipliers can range from 2 to 4 or even higher”); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (affirming attorney fee award with 2.52 multiplier).

Having assessed the reasonableness of the hourly rates, the hours worked, and the multiplier, the Court finds that the requested fee amount is reasonable under both the common fund and lodestar theories and **GRANTS** Plaintiff’s motion for attorneys’ fees.

c. Litigation Costs

In addition to attorneys’ fees, Class Counsel requests reimbursement of \$15,683.50 for expenses incurred prosecuting this action and has submitted detailed expense reports and declarations in support of this request. *Fees Mot.* 18; *Matern Decl. Final* ¶ 54. Given the reasonability of the litigation expenses, the Court **GRANTS** Class Counsel’s request for expenses in the amount of \$15,683.50.

d. Incentive Award for Plaintiff

Plaintiff Jeremy Edwards requests that the Court award him an incentive award in the amount of \$10,000.00. *Fees Mot.* 19. “Incentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citations omitted); see *In re Toys R Us-Delaware, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 470 (C.D. Cal. 2014). When considering requests for case contribution awards, courts consider five factors:

- (1) the risk to the class representative in commencing suit, both financial and otherwise;
- (2) the notoriety and personal difficulties encountered by the class representative;
- (3) the amount of time and effort spent by the class representative;
- (4) the duration of the litigation;
- (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vracken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995). Courts have approved incentive awards of \$7,500 when individual claimants receive an average award of at least \$4,000, see *Morales v. Stevco, Inc.*, No. 1:09-cv-00704 AWI, 2012 WL 1790371, at *14, 16-19 (E.D. Cal. May 16, 2012); *Alvarado v. Nederend*, No. 1:08-cv-01099 OWW DLB, 2011 WL

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Case No.	16-CV-9187-PSG (KSx)	Date	August 27, 2018
Title	Jeremy Edwards v. Chartwell Staffing Services, Inc., et al		

1883188, at *9-11 (E.D. Cal. May 17, 2011), and have approved incentive payments of \$2,500 where wage and hour Class Members would each receive, on average, only \$65.79, *see Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 463 (E.D. Cal. May 14, 2013). Plaintiff's award does not seem significantly disproportionate to the average net recovery.

Class Counsel states that Mr. Edwards "has dedicated at least approximately 55 hours to this case." *Fees Mot.* 19. Plaintiff's efforts included assisting Class Counsel in their investigation of the case, identifying and searching for documents, reviewing documents, communicating with Class Members about the status of the litigation, and consulting with Class Counsel regarding the parties' motions. *Id.* 19-20. Mr. Edwards also submitted a declaration detailing his efforts. *See Declaration of Jeremy Edwards*, Dkt. # 56-4.

Additionally, "filing a wage-and-hour class action against Plaintiff's former employer" entailed significant professional risk. *Fees Mot.* 20.

The Court is satisfied that Named Plaintiff justified the award of an incentive fee in the amount of \$10,000.

III. Conclusion

For the reasons stated above, Plaintiff's motions for final approval of class settlement and for approval of attorneys' fees and costs are **GRANTED**. Accordingly, it is HEREBY ORDERED AS FOLLOWS:

1. The Court approves settlement of the action between Plaintiff and Defendant, as set forth in the Settlement Agreement as fair, reasonable, and adequate. The Parties are directed to perform their settlement in accordance with the terms set forth in the Settlement Agreement;
2. Class Counsel is awarded 33 1/3 percent of the total settlement amount in attorneys' fees, or \$266,666.67, and \$15,683.50, in costs. Additionally, the Named Plaintiff is awarded \$10,000. The Court finds that these amounts are warranted and reasonable for the reasons set forth in the moving papers before the Court and the reasons stated in this Order;
3. Without affecting the finality of this judgment in any way, this Court hereby retains exclusive jurisdiction over Defendant and the Settlement Class Members for all matters relating to this litigation, including the administration,

UNITED STATES DISTRICT COURT
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interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

IT IS SO ORDERED.