UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV15-8519 PSG KS	Date	July 11, 2017
Title	Jasmine White et al. v. RBD Staffing, 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): **Order GRANTING the Motions for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Incentive Award**

Before the Court are Plaintiff Jasmine White's motions for final approval of class action settlement and motion for attorneys' fees, costs, and incentive award. Dkts. #51 ('Mot."), 52 ("Fees Mot."). The Court held a final fairness hearing in this matter on July 10, 2017. Having considered the arguments in all of the submissions, the Court GRANTS Plaintiff's motions.

I. Background

On October 30, 2015, Plaintiff Jasmine White ("Plaintiff") filed this class action lawsuit against Defendants Sprint/United Management Company ("Sprint") and RBD Staffing, Inc. ("RBD") (collectively, "Defendants"), alleging violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, *et seq*., the California Investigative Consumer Reporting Agencies Act ("ICRAA"), California Civil Code §§ 1786, *et seq*., and California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*. *See* Dkt. # 1; Dkt. # 40, *Second Amended Complaint* ("SAC").

Plaintiff alleges that, in March of 2015, she applied for employment as a sales specialist with Sprint through RBD, a staffing company. *Id*. ¶ 30. As part of the application process, Plaintiff alleges that RBD procured consumer and/or investigative reports on Plaintiff and subsequently denied her application without providing proper pre-authorization and adverse action disclosures. *Id*. ¶¶ 4, 35–42. Specifically, Plaintiff alleges that (1) RBD conducted background checks on applicants and employees after providing improper disclosure and authorization forms, in violation of the FCRA and ICRAA; (2) RBD failed to provide the required disclosures before taking adverse action against applicants and employees based on a background check, in violation of the FRCA; and (3) RBD failed to provide those applicants and

employees subject to adverse action with an adverse action disclosure in violation of the FCRA and ICRAA. *Id.* ¶¶ 35–42.

While litigating the case for over a year, the parties engaged in numerous discussions regarding the facts and law at issue, and met and conferred at length regarding discovery. *Mot.* 4. As part of its investigation, Plaintiff's counsel interviewed witnesses, extensively reviewed documents, including the background check release and disclosure forms at issue in this case. *Id*. at 5. Counsel also obtained information regarding Defendants' application systems, hiring policies and guidelines, background check procedures, adverse action procedures, and the estimated size of the settlement classes. Dkt. # 51-1, *Declaration of Anthony J. Orshansky* ("Orshansky Decl.") ¶ 12. In order to evaluate the potential range of settlement outcomes, Plaintiff's counsel researched the applicable case law on whether Defendants' alleged violations of the FCRA and ICRAA were "willful," and whether Defendants' status as joint-employers could be established. *Id*. ¶¶ 16–17. In addition, Counsel considered settlements in similar cases asserting FCRA violations. *Id*. ¶ 19. The parties' informal discovery and investigation revealed two important issues. First, Plaintiff learned that RBD was on the verge of insolvency and unable to fund a class settlement. *Mot.* 5; *Orshansky Decl*. ¶¶ 14–15. RBD, however, carries a "burning limits" employment practices liability insurance policy, which will provide the funding for this settlement. *Mot.* 5; *Orshansky Decl.* ¶ 14. Second, Sprint asserted that it utilized different hiring procedures for its direct-hire employees, and vigorously denies conducting any background checks with respect to Plaintiff and the putative class, thereby negating Plaintiff's ability to succeed on a joint-employer theory of liability. *Mot*. 15; *Orshansky Decl*. ¶ 43.

On September 6, 2016, the parties mediated the matter before the Honorable Herbert B. Hoffman (Ret.). *Mot*. 3. After accepting the mediator's proposal, the parties continued to negotiate and ultimately reached a class-wide settlement on the terms and conditions set forth in the Joint Stipulation of Class Action Settlement. *Mot*. 5–6; *Orshansky Decl*., Ex. 1 ("Settlement Agreement").

The Settlement Agreement provides for a non-reversionary gross settlement amount of $700,000 ("GSA") to be paid in consideration for the settlement and the release of any related claims as described in the Settlement Agreement. *Settlement Agreement* ¶¶ 21, 23, 40–43. The GSA will fund (1) cash payments to participating class members; (2) a class representative incentive award to Plaintiff of up to $5,000; (3) Class Counsel's attorneys' fees in an amount not to exceed 30% of the GSA; (4) Class Counsel's costs of up to $10,000; and (5) claims administration costs of approximately $73,000. *Id.* ¶¶ 26–28, 33. The remaining funds ("Net Settlement Fund" or "NSF") will be distributed on a pro rata basis to class members who submit timely and valid claim forms. *Id.* ¶ 26. The Settlement Agreement provides for two separate Settlement Classes: (1) the "FCRA/California Pre-Authorization Class," consisting of all persons

on whom RBD performed a background check as part of an employment application between October 30, 2013 and May 23, 2016; and (2) the "FCRA/California Adverse Action Class," consisting of all persons who applied for employment through RBD and who suffered adverse employment action between October 30, 2013 and July 21, 2016. *Id.* ¶¶ 7–9.

Each participating class member in the FCRA/California Pre-Authorization Class will receive an equal share of the NSF, and those who are also part of the FCRA/California Adverse Action Class will receive a double payment. *Id.* ¶ 26(a). Settlement awards will be paid in cash through settlement checks. *Id.* ¶ 30. Any funds from uncashed or returned checks will revert to the NSF and be re-distributed pro rata to participating class members. *Id.* ¶ 33(O). If, however, pro rata re-distribution is not economically feasible, unclaimed funds will proceed to the National Consumer Law Center, a non-profit organization dedicated to pursuing consumer justice and economic security for low-income and other disadvantaged individuals. *Id.*

On December 16, 2016, Plaintiff filed a motion for preliminary approval of the Settlement Agreement. Dkt. # 37. Finding the Settlement Agreement the result of fair and honest negotiations, this Court granted preliminary approval on March 8, 2017. Dkt. # 48, *Preliminary Approval Order*. To that end, the Court provisionally certified the two Settlement Classes, approved CPT Group, Inc. as the Claims Administrator, approved Plaintiff as the Class Representative and Plaintiff's counsel as Class Counsel, approved the mailing notice and the schedule and procedure for the final approval process. *See id.*

On May 8, 2017, CPT Group activated the settlement website and telephone support number, and mailed the notice materials to 14,402 potential class members. *Mot.* 12; Dkt. # 51-3, *Declaration of Abel E. Morales* ("Morales Decl.") ¶¶ 5–8. After performing skip-tracing in accordance with the Settlement Agreement, CPT Group re-mailed 2,247 notices as on June 6, 2017. *Id.* ¶ 6. As of June 22, 2017, the deadline for submitting claim forms, objecting to the settlement and seeking exclusion from the settlement, CPT Group received 1,636 claim forms and no objections or requests for exclusion. Dkt. # 54, *Supplemental Declaration of Abel E. Morales* ("Supp. Morales Decl.") ¶¶ 9–11.

Plaintiff now moves for final approval of the settlement and for an order awarding attorneys' fees, costs and an incentive award. *Mot.*; *Fees Mot.*

II. Final Approval of the Class Settlement

1. 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). Approval or rejection of a settlement agreement is committed to the district court's sound discretion. *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998). In determining whether a settlement is fair, reasonable and adequate, the 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." *Id.*; *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 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 after comprehensively exploring all factors. *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.* In determining whether a proposed settlement should be approved, the Ninth Circuit has a "strong judicial policy that favors settlement, particularly where complex class action litigation is concerned." *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

2. 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).

Although Plaintiff believes her case is strong, Plaintiff also recognizes numerous obstacles that stand in the way of achieving a favorable result. *Mot*. 14. Defendants have asserted numerous defenses to Plaintiff's claims and continue to deny any wrongdoing. *Id*. Plaintiff also recognizes that the most significant concern with continuing litigation is the risk of no recovery at all in light of RBD's precarious financial situation. *Id*. Furthermore, Plaintiff

admits that co-defendant Sprint does not present a guaranteed alternative source of recovery given that Sprint purportedly utilized different hiring procedures and background checks, and therefore, Plaintiff "face[s] substantial challenges in proving joint liability." *Id*. at 14–15.

In light of the uncertainties of recovery and recognized weaknesses of Plaintiff's case, 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. Where the parties reach a settlement before the commencement of class certification, expert witness discovery, and trial preparation, this factor generally favors settlement. *See Young v. Polo Retail, LLC*, CV 02-4546 VRW, 2007 WL 951821, at *3 (N.D. Cal. Mar. 28, 2007).

As discussed above, there are risks with proceeding with litigation, primarily due to RBD's financial situation which presents a significant risk that class members would obtain no recovery at all. Moreover, continued litigation presents the risk of not prevailing at the class certification stage and incurring additional time-consuming expenses related to discovery and trial. *Mot.* 18; s*ee Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (approval of settlement is "preferable to lengthy and expensive litigation with uncertain results."). Thus, the risks, expense, and duration of continued litigation support final approval of this settlement. *See Dyer v. Wells Fargo Bank, N.A.*, CV 13-02858 JST, 2014 WL 5369395, at *3 (N.D. Cal. Oct. 22, 2014) ("This factor supports final approval of this settlement because, without a settlement, Plaintiffs would risk recovering nothing after a lengthy and costly litigation.").

c. Risk of Maintaining Class Action Status Through Trial

Although the Court has preliminarily certified the two classes, the certification was for settlement purposes only. *Preliminary Approval Order* 6–7. 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 would vigorously contest a class certification motion, *see Mot*. 19, this factor favors final approval of the Settlement Agreement.

d. Amount Offered in Settlement

The fourth factor in assessing the fairness of the proposed settlement is the amount of the 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 (citations omitted). The Ninth Circuit has explained that "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.

Here, the parties have agreed to settle all claims for $700,000. After deducting attorneys' fees and costs, administration expenses, and the incentive award payment, the remaining funds will be distributed to class members who timely submit a valid claim form. Based on the number of claim forms submitted as of the June 22, 2017 deadline, the average payment per participating class member will amount to $270.95.[1] *See Supp. Morales Decl.* ¶ 12. This amount is well within the recovery range of willful FCRA violations, which carry a statutory penalty of $100 to $1000, *see* 15 U.S.C. § 1681n(a)(1)(A), and is superior to approved settlements in similar FCRA cases. *See Aceves v. Autozone, Inc.*, CV 14-2032 VAP DTB, Dkt. 49 (C.D. Cal. Nov. 18, 2016) (approving settlement award of $20 cash payment or an optional $40 gift card per class member in an analogous FCRA case); *De Santos v. Jaco Oil Co.*, CV 14-0738 JLT, 2015 WL 4418188, at *8 (E.D. Cal. July 17, 2015) (approving settlement award of $50 per class member in FCRA case).

The Court therefore finds this amount reasonable in light of the uncertainties associated with litigating this case through trial. Accordingly, this factor too counsels in favor of approving the settlement.

e. Extent of Discovery Completed and Stage of the Proceedings

The next factor requires the Court to gauge whether Plaintiff has sufficient information to make an informed decision about the merits of her case. *See Dunleavy*, 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*, C 02-4546 VRW, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007) (internal quotation marks and citations omitted).

[1] At the hearing, Plaintiff's Counsel indicated that the Claims Administrator kept the class enrollment period open until July 7, 2017, which resulted in a total of 1,863 valid claim forms submitted. While the average payment per participating class member is now slightly lower than the previously estimated $270.95, the recovery still falls well within the acceptable range of approval.

Although the parties have not completed discovery in this case, the Court is confident that Class Counsel has sufficient knowledge and understanding of the merits of Plaintiff's claims to determine that the settlement is fair, reasonable, and adequate. Counsel investigated Plaintiff's claims prior to filing this lawsuit and conducted informal discovery as to Defendants' hiring practices, background check procedures, adverse action procedures, and the disclosure and authorization forms at issue in this case. *See Mot.* 23. The parties have also met and conferred regarding discovery and set a protocol for ESI production. *Id.* Further, Class Counsel interviewed a number of witnesses as part of the investigation into the facts and theories of this case, and reviewed RBD's business records and insurance policy in order to determine its applicability to Plaintiff's claims. *Id.* Courts have held that such discovery is sufficient for parties to make an informed decision regarding the adequacy of the settlement. *See, e.g.*, *Dyer*, 2014 WL 5369395, at *3 (parties' participation in written discovery, depositions, witness interviews, and formal mediation favors an informed settlement); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068 MMC, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007), *aff'd* 331 F. App'x 452 (9th Cir. 2009) (reasoning that the parties' having undertaken informal discovery prior to settling supports approving the class action settlement) (citing *In re Mego*, 213 F.3d at 459).

Given these considerations, the Court is persuaded that Class Counsel did not negotiate the Settlement Agreement in a vacuum, but were able to fully consider the strengths and weaknesses of Plaintiff's claims. Accordingly, this factor weighs in favor of granting final approval.

f. Experience and Views of Counsel

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) (citation omitted). "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 for Plaintiff has broad experience in FCRA, consumer, and wage and hour class action litigation. *Orshansky Decl.* ¶¶ 59-62. Class Counsel has actively participated in every aspect of the litigation thus far, and believes that the settlement is fair, reasonable, and in the best interests of the class members. *Id.* ¶ 41. The Court sees no reason to rebut the presumption that Class Counsel's recommendation should be regarded as reasonable. This factor weighs in favor of final approval of the settlement.

g. Presence of a Government Participant

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

h. Class Members' Reaction 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*, CV 11-0973 W (KSCx), 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").

Of the 14,402 potential class members who were sent notice of the settlement, CPT Group received 1,636 claim forms and no objections or requests for exclusion as of June 22, 2017. *Supp. Morales Decl.* ¶¶ 9–11. This response is an indicator that class members find the settlement to be fair, reasonable, and adequate. *See, e.g.*, *Hanlon*, 150 F.3d at 1027 ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness."). This factor thus weighs in favor of approval of the settlement.

3. Conclusion

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

III. Motion for Attorneys' Fees, Costs and Incentive Award

Plaintiff requests that the Court authorize the Settlement Administrator to disburse from the settlement amount: (1) $175,000 in attorneys' fees, which constitutes 25 percent of the settlement amount; (2) an award of actual costs incurred by Class Counsel in the amount of $3,723.06; and (3) a $5,000 case contribution award to Plaintiff Jasmine White in consideration for her services as a class representative. *See Fees Mot.*

1. 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*, 327 F.3d at 963; *see also Browne v. Am. Honda Motor Co., Inc.*, No CV 09-6750 MMM (DTB), 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.

2. 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. The percentage can range, however, and courts have awarded more than 25 percent of the fund as attorneys' fees when they have deemed a higher award to be reasonable. *See Singer v. Becton Dickinson and Co.*, No. 08-CV-821-IEG (BLMx), 2010 WL 2196104, at *8 (S.D. Cal. 2010) (finding as reasonable an award of 33.3 percent of the common fund because Class Counsel took the case on a contingent basis and litigated for two years, awards usually range from 20 percent to 50 percent, and no class member objected to the award); *Gardner v. GC Services, LP*, No. 10CV0997-IEG (CAB), 2012 WL 1119534, at *7 (S.D. Cal 2012) (finding as reasonable a departure from the 25 percent benchmark where the results achieved were favorable, the risks of litigation were substantial, and the case was complex).

Here, Plaintiff requests that the Court approve an attorneys' fee award of $175,000, which amounts to 25 percent of the GSA. *Fees Mot.* 1. In light of the risks and challenges involved in this litigation, and the favorable results achieved for the class, Class Counsel's request for attorneys' fees in the amount of 25 percent of the common fund is reasonable.

b. Lodestar Cross-Check

Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. Class Counsel submits that under the lodestar method, prior to any multiplier, it is

entitled to $156,554 for the amount of work spent through final approval.[2] *Fees Mot.* 20. To determine attorneys' fees under the lodestar method, a court must multiply the reasonable hours expended by a reasonable hourly rate. *See 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

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." (citation omitted)); *Viveros v. Donahue*, CV 10-08593 MMM (Ex), 2013 WL 1224848, at *2 (C.D. Cal. 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.*, CV 11-02398 ODW (PLAx), 2011 WL 3021533, at *3 (C.D. Cal. 2011); *Bademyan v. Receivable Mgmt. Servs. Corp.*, CV 08-00519 MMM (RZx), 2009 WL 605789, at *5 (C.D. Cal. 2009).

Here, Class Counsel requests the following rates: $595 per hour for Anthony J. Orshansky (19 years of experience); $495 per hour for Alexandria Kachadoorian (12 years of experience); and $475 per hour for Justin Kachadoorian (9 years of experience). *Fees Mot.* 20; *Orshansky Decl.* ¶ 66.

The Court turns to the *2016 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*, CV 13-728 PSG AJW, at *4–5 (C.D. Cal. Oct. 23, 2015); *Carbajal v. Wells Fargo Bank, N.A.*, CV 14-7851 PSG PLA, at *5 (C.D. Cal. July 29, 2015). The Real Rate Report identifies attorney rates by location, experience, firm size, areas of

[2] Anthony J. Orshansky has spent 155.2 hours litigating this case with an additional 10 hours anticipated through the final approval hearing at a rate of $595 per hour (165.2 x 595 = $98,294). *Fees Mot.* 20. Alexandria Kachadoorian has spent 15.5 hours on this case at the rate of $495 per hour (15.5 x $495 = $7,672.50). *Id.* Justin Kachadoorian has spent 96.5 hours litigating this matter and anticipates spending an additional 10 hours through final approval at the rate of $475 per hour (106.5 x $475 = $50,587.50). *Id.* Calculated using Class Counsel's rates, the total lodestar is therefore $156,554.

expertise and industry, as well as specific practice areas and is based on actual legal billing, matter information, and paid and processed invoices from more than 80 companies. *See Hicks v. Toys 'R' Us-Delaware, Inc.*, CV 13-1302 DSF JCG, 2014 WL 4670896, at *1 (C.D. Cal. Sept. 2, 2014). Courts have found that the Real Rate Report is "a much better reflection of true market rates than self-reported rates in all practice areas." *Id.* at *1; *see also Tallman v. CPS Sec. (USA), Inc.*, 23 F. Supp. 3d 1249, 1258 (D. Nev. 2014) (considering the Real Rate Report); *G.B. ex rel. N.B. v. Tuxedo Union Free Sch. Dist.*, 894 F. Supp. 2d 415, 433 (S.D.N.Y. 2012) (same).

The 2016 Real Rate Report offers a number of relevant data points for fees in the Central District. According to the report, lawyers engaged in consumer protection and general employment litigation are classified as "General Liability" attorneys. *Real Rate Report* at 236. The report states that the median rate for partners practicing general liability litigation law in Los Angeles is $332.50, while the median rate for similarly situated associates is $220.00. *Id.* at 130. The third quartile rate in this category is $573.00 for partners and $300.00 for associates. *Id.* The report further states that the median rate for partners generally in Los Angeles with 21 or more years of experience is $645, the median rate for partners with fewer than 21 years of experience is $540, and the median rate for associates with more than 7 years of experience is $423. *Id.* at 70, 75.

The Court finds that, given the type of work performed and the experience of counsel in this case, Plaintiff's attorneys performed in the upper quartile of similarly situated attorneys, and so are entitled to fees in the top range of that suggested by the Real Rate Report. The Court adjusts the attorneys' hourly rates as follows:

Attorney Name	**Experience Level**	**Requested Hourly Rate**	**Accepted Hourly Rate**
Anthony J. Orshansky	Partner, 19+ years	$595	$573
Alexandria Kachadoorian	Associate, 12+ years	$495	$420
Justin Kachadoorian	Associate, 9+ years	$475	$400

See Orshanksy Decl. ¶ 66.

2. Reasonable Hours

With regard to the hours expended, an attorney award should include compensation for all hours reasonably related to 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 record indicates that Class Counsel spent a total of 267.2 hours on this case and believes it will spend an additional 20 hours through final approval for a total of 287.2 hours expended. *See Orshansky Decl.* ¶ 66. These hours were spent, *inter alia*, engaging in pre-litigation investigation; researching the substantive law of each claim and defense raised; developing litigation strategies; producing and reviewing Defendants' application/disclosure/authorization forms and hiring policies; meeting and conferring regarding discovery; interviewing witnesses; developing and executing mediation and settlement strategies; preparing mediation briefs and damages models; preparing and reviewing the Settlement Agreement, class notice and other related materials; and drafting Plaintiff's motions for preliminary and final approval of the Settlement Agreement. *Id.* ¶ 63. After reviewing the records submitted by Plaintiff, the Court finds that 287.2 hours is reasonable.

Based on the Court's adjustment of Class Counsel's hourly rates, the reasonable lodestar amount is $143,769.60. The Court adjusts the attorneys' fees request as follows:

Attorney Name	**Accepted Hourly Rate**	**Number of Hours Worked**	**Total Request**
Anthony J. Orshansky	$573	155.2 (+10)	$94,659.60
Alexandria Kachadoorian	$420	15.5	$6,510.00
Justin Kachadoorian	$400	96.5 (+10)	$42,600.00
		Revised Lodestar Amount	$143,769.60

3. Multiplier

The lodestar amount in this case is $143,769.60. Class Counsel requests $175,000 in attorneys' fees. *See Fees Mot. 1.* The Court would therefore need to apply roughly a 1.22 multiplier to approve Class Counsel's requested fee award of $175,000, or 25 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 and achieved 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); *In re High-Tech Employee Antitrust Litigation*, 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.*, 91Cal. 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 therefore GRANTS Plaintiff's motion for attorneys' fees.

c. Litigation Costs

In addition to attorneys' fees, Class Counsel requests reimbursement of expenses incurred throughout litigation in the amount of $3,723.06, which is considerably less than the $10,000 cost allocation previously negotiated and agreed upon in the Settlement Agreement. *Fees Mot.* 1; *Orshansky Decl.* ¶ 70–73. Attorneys are typically permitted "to recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." *In re Omnivision Tech.*, 559 F. Supp. at 1048. Here, Class Counsel has reviewed accounting records and invoices and can attest to the appropriateness and necessity of the costs. *Orshansky Decl.* ¶ 70. The Court is satisfied that these costs are reasonable, and therefore, the Court grants Plaintiff's motion for costs in the amount of $3,723.06.

d. Incentive Award

Finally, Plaintiff requests $5,000 as an incentive award. *Fees Mot.* 2; *Orshansky Decl.* ¶¶ 74–79. "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 incentive awards, courts consider five principal 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 Vraken v. Atl. Richfield Co., 901 F.Supp. 294, 299 (N.D. Cal. 1995).

In its Order preliminarily approving the class action settlement, the Court raised concerns about the $5,000 amount of the service award given that Ninth Circuit precedent has struck down excessively high awards that appear to over-compensate plaintiffs. *See Online DVD-Rental*, 779 F.3d at 947–48; *Preliminary Approval Order* 12–13. At the time of the preliminary

approval, the Court did not have before it Plaintiff's declaration in support of her incentive award. *See* Dkt. # 52-1, *Declaration of Jasmine White* ("White Decl."). Having reviewed the declaration and the facts set out in the motion, the Court is no longer concerned that the requested service award is unreasonable.

First, as noted in the Preliminary Approval Order, Plaintiff is the only representative in this case and has been involved in this litigation since March 2015. Second, in her declaration, Plaintiff asserts that she has actively participated in the prosecution of this litigation, including participating in regular discussions with Class Counsel, producing relevant documents, identifying potential witnesses, reviewing documents, correspondence and mediation briefs, and participating in mediation and settlement negotiations. *White Decl.* ¶ 7. She estimates that she has spent approximately 60 hours engaged in these activities. *Id.*

In addition to these considerations, the Court also notes that the $5,000 incentive award constitutes less than 1 percent of the GSA, which is within the range found reasonable in *Staton. See* 327 F.3d at 976–77 (striking down a service award of 6 percent); *see also Bostick v. Herbalife Int'l of Am., Inc.*, No. CV 13-2488 BRO (RZx), 2015 WL 3830208, at *6 (C.D. Cal. June 17, 2015) ($10,000 for one named plaintiff); *Boyd v. Bank of Am. Corp.*, No. SACV 13-561 DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18, 2014) ($15,000 for named plaintiff); *Gino Morena Enters., LLC*, No. CV 13-1332 JM (NLSx), 2014 WL 5606442, at *3 (S.D. Cal. Nov. 4, 2014) ($10,000 each for two named plaintiffs). Moreover, as a result of his initiating the case and his efforts throughout, class members will receive financial benefits they otherwise would never have received.

Accordingly, the Court grants Plaintiff's request for an incentive award.

IV. Conclusion

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

1. The Court approves settlement of the action between Plaintiff and Defendants, as set forth in the Settlement Agreement as fair, just, 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 $175,000 in attorneys' fees and $3,723.06 in costs. Additionally, Plaintiff is awarded a $5,000 incentive award. 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. The Court approves payment in the amount of $73,000 to CPT Group for settlement administration costs.

4. CPT Group is authorized to disburse funds pursuant to the terms of the Settlement Agreement and this Order.

5. Without affecting the finality of this judgment in any way, this Court hereby retains exclusive jurisdiction over Defendants and the Settlement Class Members for all matters relating to the Litigation, including the administration, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

IT IS SO ORDERED.

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