UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HECTOR ALVARADO, et al.,

Plaintiffs,

v.

OAK HARBOR FREIGHT LINES, INC.,

Defendant.

Case No. 17-cv-06425-SK

ORDER ON MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEY'S FEES

Regarding Docket Nos. 86, 87

This matter comes before the Court upon consideration of the Plaintiffs' motions for final approval of the class action settlement and California Private Attorneys General Act ("PAGA") settlement and for attorney's fees, costs and incentive awards. Having carefully considered the parties' papers, relevant legal authority, the record in the case, and having had the benefit of oral argument, the Court hereby GRANTS the motion for final approval and GRANTS IN PART and DENIES IN PART the motion for attorney's fees, costs and incentive awards for the reasons set forth below.

ANALYSIS

A. Approval of the Settlement.

A court may approve a proposed class action settlement of a certified class only "after a hearing and on finding that it is fair, reasonable, and adequate," and that it meets the requirements for class certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not address whether the settlement is ideal or the best outcome, but only whether the settlement is fair, free of collusion, and consistent with plaintiff's fiduciary obligations to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to

assessing a settlement proposal: (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 proceeding; (6) the experience and views of counsel; (7) the presence of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Settlements that occur before formal class certification "require a higher standard of fairness." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such settlements, in addition to considering the above factors, a court also must ensure that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

As the Court found in its order granting preliminary approval and conditional certification of the settlement classes, the prerequisites of Rule 23 have been satisfied purposes of certification of the Settlement Classes for both the Driver and Non-Driver Classes. Moreover, the Court finds that the notice to the class was adequate and was reasonably designed to reach all class members.

As the Court previously found in its order granting preliminary approval, the *Hanlon* indicate the settlement here is fair and reasonable and treats class members equitably relative to one another. Additionally, the Settlement Administrator received no objections. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (citation omitted); *see also Churchill Vill.*, 361 F.3d at 577 (holding that approval of a settlement that received 45 objections (0.05%) and 500 opt-outs (0.56%) out of 90,000 class members was proper).

After reviewing all of the required factors and considering the evidence, the Court finds the Settlement Agreement is fair, adequate, and reasonable. The Court thus GRANTS Plaintiffs' motion for final approval, including payment of $18,450 to the Claims administrator ILYM Group, Inc.

The Court hereby approves the following implementation schedule:

Effective Date	The date the Settlement becomes completely Final.
Timing of Funding	Defendant shall fully fund the Gross Settlement Amount no later than sixty (60) days after the Effective Date of the Settlement.
Deadline for Administrator to make all payments due under the Settlement	Within thirty (30) days after Defendant fully funds the Gross Settlement Amount.
Check-cashing / Digital Payment Deadline	One hundred eighty (180) days after issuance of checks by the Settlement Administrator.
Deadline for administrator to distribute uncashed check funds to the California State Controller Unclaimed Property Fund,	As soon as practicable after check-cashing deadline.
Deadline for Plaintiffs to file a Post-Distribution Accounting	Within thirty (30) days after the distribution of any remaining monies to the California State Controller Unclaimed Property Fund.

B. Attorney's Fees.

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." A court has discretion to calculate and award attorneys' fees using either the percentage-of-the-fund method or the lodestar method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) *see also Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328-29 (9th Cir. 1999) ("[T]he district court must exercise its inherent authority to assure that the amount and mode of payment of attorneys' fees are fair and proper."). The Ninth Circuit has held that twenty-five percent of the gross settlement is the benchmark for attorneys' fees awarded under the percentage method, but the amount may be adjusted "when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)

In assessing whether the percentage requested is fair and reasonable, courts generally consider "the result achieved, the risk involved in the litigation, the skill required and quality of

work by counsel, the contingent nature of the fee, awards made in similar cases, and the lodestar crosscheck." *Nwabueze v. AT & T Inc.*, 2013 WL 6199596, at *10 (N.D. Cal. Nov. 27, 2013); *see also In re Quintus Sec. Litig.*, 148 F.Supp.2d 967, 973-74 (N.D. Cal. 2001) (noting that courts consider six factors when determining whether to adjust the benchmark percentage, including "(1) the result obtained for the class; (2) the effort expended by counsel; (3) counsel's experience; (4) counsel's skill; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel's loadstar").

The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award. *In re Omnivision Technologies, Inc*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citation omitted); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (noting that the "most critical factor" to the reasonableness of an attorney fee award is "the degree of success obtained").

Finally, the Court examines the lodestar calculations in comparison, to provide "a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. "The 'lodestar' is calculated by multiplying the number of hours . . . reasonably expended on the litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996). The reasonableness of the rates is judged in comparison to the prevailing rates in the community for similar work performed by attorneys with similar skills and experience. *In re Magsafe Apple Power Adapter Litig.*, 2015 WL 428105, at *11 (N.D. Cal. Jan. 30, 2015) (quoting *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013). Here, Plaintiffs' two firms attest that the expended

Plaintiffs seek attorney's fees of one-third the settlement amount of $3,625,000, amounting to $1,208,333.33. In their motion for attorney's fees, Plaintiffs stated that their lodestar amount was $365,736.30 by the two firms, Lavi & Ebrahimian, LLP ("L&E") and Mayall Hurley, P.C. ("Mayall Hurley"). (Dkt. No. 87.) Malcolm Clayton from L&E stated that the lodestar from L&E exceeded $201,000 and Robert J. Wassermann from Mayall Hurley stated that the lodestar from Mayall Hurley was $152,000. (Dkt. No. 87-1 (Declaration of Malcom Clayton) at ¶ 53; Dkt. No. 87-2 (Declaration of Robert J. Wassermann) at ¶ 26.) However, L&E failed to provide any

information about what work was performed by which attorneys and at what rate. When the Court asked for a further declaration, Plaintiffs failed to provide one until the Court denied the motion for attorneys' fees without prejudice to Plaintiffs providing the required declaration. (Dkt. Nos. 91, 92.) In the further declaration, Clayton from L&E stated that the lodestar from L&E was actually $341,150. (Dkt. No. 93 at ¶ 22.) However, that amount includes $76,817.50 in non-detailed billables. (*Id*. at ¶ 23.) L&E included a block billing entry of $58,000 from Joseph Lavi and of $18,200 from Vincent Granberry for "Matter management, supervision, communication and other work not captured by specific tasks". (Dkt. No. 93, Ex. 2.) The Court will not consider these large block entries for time that was not specifically billed.

In addition, the Court notes that both firms expended a large amount of time (and billed entries) for time communicating among attorneys within each firm and between the law firms. They billed for every attorney participating in these communications. Approximately ten percent of L&E's detailed billables of $264,332.50 was for communication between Plaintiffs' counsel. Over forty percent of Mayall Hurley's entries were for communication between Plaintiffs' counsel. Thus, it does not appear as though this matter was litigated efficiently and that the lodestar was inflated by having too many attorneys and law firms prosecuting Plaintiffs' claims.

Finally, the Court notes that while attorneys working at Mayall Hurley bill at an hourly rate between $473 and $1,141 an hour, the attorneys who actually billed time on this case bill at an hourly rate between $948 and $997, which is towards the higher end of this range. (Dkt. No. 87-2 at ¶¶ 25, 26. Again, by failing to have less experienced counsel perform some of the legal work, Plaintiff's proposed lodestar for comparison is significantly inflated.

Using the lodestar asserted in Plaintiffs' motion of $365,736.30, awarding Plaintiffs their requested attorney's fees of $1,208,333.33 would lead to a multiplier of 3.3 times their lodestar. Considering Plaintiffs' increased lodestar by including the detailed billables from Clayton's subsequent declaration, the multiplier would be 2.9. However, in light of the inefficiencies noted above, the Court finds that the lodestar is actually more appropriately considered to be no more than $333,066 (which is 80 percent of the increased detailed billables from both firms), and the resulting multiplier of their adjusted lodestar would be 3.6 times. At the hearing, the Court noted

that Plaintiffs cited cases where courts in this district approved settlements providing the attorneys one-third of the settlement amount and separately cited cases where the requested fee was two to four times higher than the lodestar. The Court asked whether there were comparable cases where courts approved settlements providing attorneys with one-third of the settlement amount that *also* were over three times the lodestar. (Dkt. No. 88.) Plaintiffs represented that they did not find any such cases.

Moreover, while the Court notes that Plaintiffs' counsel did obtain a good result for the class members, this was not a particularly complicated case and did not involve extensive or protracted litigation. The parties engaged in minimal discovery and did not file any motions other than those related to the approval of the settlement. Moreover, if the Court were to limit Plaintiffs' counsel to the benchmark of 25 percent of the settlement amount, counsel would still receive an amount that is more than 2.7 times of their adjusted lodestar.

Having considered the relevant factors, the Court is not persuaded that this case warrants an upward departure from the established benchmark. Nor does the Court find that a downward departure would be warranted. Even though twenty-five percent would provide Plaintiff's counsel with a significant amount above its lodestar at a reasonable rate, counsel did work on a contingency basis, obtained a $3.675 million settlement, and no class members objected to counsel's receiving an even greater amount. Accordingly, a benchmark fee award of amounting to twenty-five percent of the settlement fund – $906,250 – is appropriate.

The Court will hold back ten percent of the attorney's fees award ($90,625) pending further order, to be issued after counsel have filed the post-distribution accounting required by the District's Procedural Guidance on Class Action Settlements.

C. Litigation Costs.

"There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (quoting*In re Heritage Bond Litig.*, 2005 WL 1594403, at *23 (C.D.Cal. June 10, 2005)). "[C]ourts throughout the Ninth Circuit regularly award litigation costs and expenses – including reasonable travel expenses—in wage-and-hour

class actions." *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 265 (N.D. Cal. 2015)

The settlement agreement provides that class counsel may obtain up to $20,000 in costs. (Dkt. No. 79-1, Ex. 1 at ¶ 4.3.2.) Here, appointed class counsel has submitted a list of costs for filing fees, travel costs, mediation fees, and other litigation related costs amounting to $22,386.13. (Dkt. No. 87-1 at ¶ 29 and Ex. 4; Dkt. No. 93 at ¶ 25 and Exhibit 4.) The Court concludes that these are reasonable litigation expenses incurred for the benefit of the class. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (noting that a prevailing plaintiff may be entitled to costs including, among other things, "postage, investigator, copying costs, hotel bills, meals," and messenger services). Therefore, the Court grants the request for the fees provided by the settlement agreement in the amount of $20,000.

D. Incentive Payment.

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (district courts may approve incentive awards to named Plaintiffs to compensate them for work done on behalf of the class and in consideration of the risk undertaken in bringing the action). To determine the appropriateness of incentive awards a district court should use "relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." *Staton*, 327 F.3d at 977. "[I]in this district, a $5,000 incentive award is presumptively reasonable." *In re Linkedin User Privacy Litig.*, 309 F.R.D. 573, 592 (N.D. Cal. 2015) (citing *Chao v. Aurora Loan Services, LLC*, 2014 WL 4421308, at *4 (N.D. Cal. Sept 5, 2014) (noting that "Plaintiffs' . . . request for a $7,500 incentive award for each representative Plaintiff is above the $5,000 figure which this Court has determined is presumptively reasonable").

Here, Plaintiffs requests an incentive payment in the amount of $10,000 each. The Court finds that this amount, while greater than the presumptively reasonable amount of $5,000, is warranted in light of the participation by Plaintiffs and the substantial risks they took by being the

named Plaintiffs. Therefore, the Court finds that Plaintiffs' requested award of $10,000 is reasonable.

CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiff's the motion for final approval of the class action settlement and GRANTS IN PART and DENIES IN PART the Plaintiff's motion for attorneys' fees and costs and for Plaintiff's incentive payment. The Court AWARDS the following fees and costs: $906,250 in attorneys' fees, $20,000 in litigation costs; $18,450 to the Claims administrator ILYM Group, Inc., and $10,000 to each named Plaintiff. Ten percent of the attorney's fees award ($90,625) shall be held back pending further order, to be issued after counsel have filed the post-distribution accounting required by the District's Procedural Guidance on Class Action Settlements.

IT IS SO ORDERED.

Dated: February 21, 2025

SALLIE KIM
United States Magistrate Judge

United States District Court
Northern District of California