UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	CV 15-9171 PSG (JPRx)	Date	December 4, 2017
Title	Anton Belevich v. Bank of America National Association, *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 Final Approval of Class Action Settlement Agreement and Award of Attorneys' Fees, Costs, and Incentive Award**

Before the Court are Plaintiff Anton Belevich's ("Plaintiff") motions for final approval of class action settlement and for attorneys' fees and costs. Dkts. # 79, *Motion for Final Approval of Class Action Settlement* ("*Mot.*"), 80, *Motion for Attorneys' Fees, Costs, and Service Award* ("*Fees Mot.*"). The Court held a final fairness hearing in this matter on December 4, 2017. Having considered the arguments in all of the submissions, the Court GRANTS Plaintiff's motions.

I. Background

On September 21, 2015, Plaintiff Anton Belevich ("Plaintiff") filed this putative class action against Bank of America National Association ("Defendant" or "Bank of America") in the Los Angeles County Superior Court, alleging numerous violations of California's labor laws. Following the filing of two amended complaints in state court, on November 25, 2015, Defendant removed the case to federal court under the Class Action Fairness Act ("CAFA"). *See* Dkt. # 1.

Plaintiff pursued this class action on behalf of all non-exempt Personal Bankers (later renamed Relationship Managers) employed by Defendant in California who were allegedly denied meal periods, compliant wage statements, and waiting time penalties within the statutory time period. *See generally* Dkt. # 20, *Second Amended Complaint* ("SAC"). In the SAC, the operative complaint in this action, Plaintiff asserted claims for: (1) failure to provide meal periods in violation of California Labor Code §§ 226.7 and 512; (2) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (3) violation of California Business & Professions Code §§ 17200, *et seq.*; (4) waiting time penalties under California

Labor Code §§ 201-203; and (5) penalties pursuant to the Private Attorneys' General Act ("PAGA"), California Labor Code §§ 2698, *et seq.*. *See SAC.*

After engaging in months of formal and informal discovery, conducting a payroll, timekeeping, and damages analyses, and filing motions for summary judgment and class certification, the parties mediated the case before Central District panel mediator Phyllis Cheng on April 4, 2017. *Mot.* 5. The parties did not reach a settlement at the mediation, but subsequently accepted Ms. Cheng's settlement proposal. *Id.* The parties fully executed a Memorandum of Understanding on April 11, 2017, and thereafter negotiated a comprehensive settlement agreement, titled Joint Stipulation for Class Action Settlement Agreement. *Id.*; *see* Dkt. # 75, Ex. 1 ("Settlement Agreement"). The class includes approximately 7,310 Bank of America employees who, from September 21, 2011 through December 31, 2016, worked for Bank of America in the state of California as Personal Bankers or Relationship Managers. *Mot.* 2.

The Court granted Plaintiff's motion for Preliminary Approval of the Settlement Agreement on July 31, 2017. *See Order Granting Preliminary Approval of Class Action Settlement* ("*Preliminary Approval Order*"), Dkt. # 77.

A. Proposed Settlement Agreement

The Settlement Agreement provides for a gross settlement in the amount of $6,000,000 ("Gross Settlement Fund"). *Mot.* 7. After fees, costs, incentive award, and administration costs are paid out of the Gross Settlement Fund, the remaining amount of $4,408,276 represents the "Net Settlement Fund," and will be allocated pursuant to the terms of the settlement to those Class Members approved for payment. *Id.* The estimated total payment to the Class Members after reducing the Net Settlement Fund by the employer's share of payroll taxes ($273,579.63) is $4,134,696.37. *Id.* That amount will be divided pro rata based on the amount of workweeks worked by each Class Member, and the average Class Member recovery is estimated to be $1,027.76. *Mot.* 9.

Any uncashed checks will result in distribution to a *cy pres* recipient. The parties designated a nonprofit legal organization called Legal Aid at Work, whose main purpose is to combat wage theft and "empower workers in low-wage industries to attain economic security for themselves and their families by enforcing wage protection through litigation, administrative representation, and other advocacy." *Mot.* 10:4-6.

The Settlement Agreement also contemplates a release by all participating Class Members of "any and all individual and class claims . . . that were alleged in the Lawsuit, including, but not limited to any claims under federal or state law that are alleged in the Second Amended Complaint." *Preliminary Approval Order* 8-9. Any Class Member who does not request exclusion will be bound by the release. *Id.* 9. In addition, the Class Representatives will release and discharge Releasees "from any and all actions, causes of action, grievances, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs actually incurred)." *Mot.* 10:16-18.

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 July 31, 2017. *See Preliminary Approval Order*. In its Order, the Court certified, for settlement purposes only, a Rule 23(b)(1) class of:

> "[A]ll persons, who, from September 21, 2011 through December 31, 2016 (the 'Class Period') worked for Bank of America in the State of California as a Personal Banker or Relationship Manager."

Preliminary Approval Order 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.

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 Synocor 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, Defendant is represented by highly experienced and competent counsel who "asserted numerous complete liability defenses against Plaintiff's claim and in fact had filed a motion for summary judgement immediately prior to Plaintiff filling his motion for class certification". *Mot.* 24: 7-10.

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 exponentially. *Mot.* 17. "Litigating the class action claims would require substantial additional

preparation and discovery. It would require deposition of experts, the presentation of percipient and expert witness at trial, as well as the consideration, preparation and presentation of voluminous documentary evidence and the preparation and analysis of expert reports" *Id.* 17:20-24. 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* 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 Defendant has already indicated it may vigorously contest class certification should this case proceed to trial, and because Plaintiff has also noted that there is an abundance of authority denying class certification of meal period claims in federal court, this factor favors final approval of the Settlement Agreement. *See Mot*. 17-18.

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 $6,000,000 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").

Here, the total payment to Class Members is $4,134,696.37; the average individual settlement award will be $1,027.76. *Mot*. 9:20-22. Considering that the Defendant, when it brought the case to federal court under CAFA, predicted a total recovery of $10,000,000 if Plaintiff was successful, a total settlement amount of 60% of the predicted amount falls well within the range of possible approval. *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, Plaintiff states that the parties engaged in an extensive formal discovery and informal information exchange to enable both sides to assess the claims and potential defenses. *Mot*. 16:6-8. The parties were able to accurately assess the legal and factual issues that would arise if the case proceeded to trial and "Class Counsel relied on their substantial litigation experience in similar wage and hour class and collective actions." *Mot.* 16:10-11. The evaluation of liability and damages "was premised on a careful and extensive analysis of the effects of Defendant's meal period policies and practices on Class Members' pay." *Id.* 16: 12-13.

The parties also participated in a good-faith, arms' length mediation and additional conferences with the mediator. *Id.* 18. 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

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 "believe[] this settlement will provide a substantial benefit to the Class Members." *Mot.* 19:1-2. *See also Declaration of Matthew Righetti* Dkt. # 79-1, ¶¶ 7-8. 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, Notice to Class Members was mailed on September 8, 2017 and while the time for objections has already passed (October 23, 2017), not a single Class Member has objected to the Settlement. *Mot.* 19. *See also Declaration of Derek Smith* Dkt. # 79-2, ¶¶3-10.

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.

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

Class Counsel request that the following be disbursed from the settlement amount: (1) 25%, or $1,500,000, of the Gross Settlement Fund for attorneys' fees; (2) reimbursement for litigation expenses in the amount of $18,500.00; and (3) a $10,000 incentive award for the Named Plaintiff. *Fees Mot.* 17.

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

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 25 percent of the total Settlement amount. *Fees Mot.* 6. The Court finds this request reasonable under the percentage of the common fund method because it both matches the "benchmark" and meets the *Viscaino* reasonableness factors.

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.* 15:20-21. Second, the Court finds that the risks of litigation were real and substantial, given that the Defendant had "asserted numerous complete liability defenses against Plaintiff's claim and in fact had filed a motion for summary judgement immediately prior to Plaintiff filling his motion for class certification". *Mot.* 17. Had Plaintiff proceeded to trial, he would have encountered significant challenges in presenting highly technical evidence to the jury and risked the possibility that the jury would agree with Defendant's experts or even that the Court would not certify the class. Third, the duration of the case—lasting over two years to date—counsels in favor of the attorneys' fees award. Fourth, Class Counsel has litigated this case on a contingent fee basis, and this too counsels in favor of approving the award. *See Fees Mot.* 8-9: 24-8. Fifth, the request for attorneys' fees in the amount of 25 percent falls within the benchmark range. *See, e.g.*, *In re Mattel, Inc.*, CV 99-10368 MRP (CWx), slip. op. at 2 (C.D. Cal. Sept. 29, 2003) (awarding fees of 27 percent of $122 million settlement); *In re Hewlett-Packard Co. Sec. Litig.*, CV 11-1404 AG (RNBx), slip. op. at 2-3 (C.D. Cal. Sept. 15, 2014) (awarding fees of 25 percent of $57 million settlement); *In re Mercury Interactive Corp. Sec. Litig.*, C 2-2270 JW (PVTx), slip. op. at 1 (N.D. Cal. Apr. 24, 2007) (awarding 25 percent of $78 million settlement).

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

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 Righetti Glugoski PC, ("Righetti") a San Francisco, California firm. Righetti charges a rate of $775 per hour for Matthew Righetti (Partner) and $450 per hour for Michael Righetti (Associate). *Fees Mot.* 11:13-14. Righetti has to date spent 1,315.7 total hours of attorney time and 584.3 hours of paralegal time over the course of approximately two and a half years. *Id.* 12:1-2.

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 San Francisco, partners have an hourly rate ranging from $383 to $772.95, and associates from $250 to $365. *See 2016 Real Rate Report* 56, 99. In the practice area of labor and employment law, however, a partner has an average hourly rate

between $556 and $870. *See id.* 51. Similarly situated associates earn an average hourly rate between $274 and $550. *See id.*

Accordingly, the Court finds that Righetti's hourly rates ranging from $450 for associates to $775 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 Righetti's attorneys have to date spent 1,315.7 total hours of attorney time and 584.3 hours of paralegal time. *Fees Mot.* 12:1-13. 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 Declaration of Matthey Righetti in Support of Fees Motion* 6-8. After reviewing the declarations submitted by Class Counsel, and considering the duration, scope and complexity of this case, the Court finds 1,315.7 and 584.3 hours reasonable.

3. Multiplier

Class Counsel requests attorneys' fees in an amount of 25% of the Gross Settlement ($6,000,000), or $1,500,000, plus costs and expenses of approximately $18,500,000. *Fees Mot.* 17. Class Counsel's lodestar is $857,192.50 (*See Time Report* Ex. 3, Dkt #80-1) with additional fees still to be incurred to complete the approval and settlement process. *Fees Mot.* 12:20-21. The Court would therefore need to apply a 1.74 multiplier to approve Class Counsel's requested fee award of $1,500,000, 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, 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); *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.

a. Litigation Costs

In addition to attorneys' fees, Class Counsel requests reimbursement of $18,500.00 for expenses incurred prosecuting this action, and has submitted detailed expense reports and declarations in support of this request. *Fees Mot.* 12:14-21. If the Settlement remains unopposed, Plaintiff estimates a final cost figure of approximately $21,000.00 to finalize it. *Id.* Given the reasonability of the litigation expenses, the Court **GRANTS** Class Counsel's request for expenses in the amount of $18,500.00.

b. Incentive Award for Plaintiff

Plaintiff Anton Belevich requests that the Court award him an incentive award in the amount of $10,000.00. *Fees Mot.* 14. "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 Vraken 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

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. Belevich "spent a considerable amount of time (estimated at over 100 hours) assisting the investigation and actively prosecuting this action." *Fees Mot.* 15:1-3. Plaintiff's efforts included, looking for and reviewing documents, drafting, traveling, communicating with Class Counsel, providing extensive intake interviews, participation in meditation preparation and strategy, and reviewing and signing the Settlement. *Id.* 15. Mr. Belevich also submitted a declaration detailing his efforts. *See Declaration of Anton Belevich* ("*Belevich Decl.*"), Dkt. # 80. Plaintiff "spent considerable time and effort assisting in the prosecution of his claims, including obtaining records, reviewing pleadings and discovery, participating in the mediation, providing declarations, and maintaining regular contact with Class Counsel, as well as attending both settlement hearings." *Id.* ¶¶ 3-7.

Plaintiff also states that his participation as Named Plaintiff in this case was a significant risk to his career, as "[b]ringing cases such as these does not make you a desirable candidate for other potential employers who may search for information about me on the internet." *Id.* ¶ 8.

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:

- 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;

- Class Counsel is awarded 25 percent of the total settlement amount in attorneys' fees, or $1,500,000, and $18,500 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;

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-9171 PSG (JPRx)	Date	December 4, 2017
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- 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, interpretation, effectuation, or enforcement of the Settlement Agreement and this Order.

IT IS SO ORDERED.