UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LEONARDO GONZALEZ-TZITA, et al.,

Plaintiffs,

v.

CITY OF LOS ANGELES, et al.,

Defendants.

Case No. CV 16-0194 FMO (Ex)

ORDER RE: MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

Having reviewed and considered all the briefing filed with respect to Plaintiffs' Third Revised Motion for Class Certification and Preliminary Approval of Class Settlement, (Dkt. 130, "Motion"), and the oral argument presented at the hearing on May 9, 2019, the court concludes as follows.

BACKGROUND

On January 11, 2016, plaintiff Leonardo Gonzalez-Tzita ("Gonzalez-Tzita") filed a Complaint, individually and on behalf of all others similarly situated, against the City of Los Angeles ("the City"), asserting claims under 42 U.S.C. § 1983 for violations of the First and Fourth Amendments based on the City's seizures of the putative class members' vehicles. (See Dkt. 1, Complaint at ¶¶ 9-10). On July 8, 2016, Gonzalez-Tzita, Esteban Diego Esteban, and Sidonio Lomeli (collectively, "plaintiffs") filed a Third Amended Complaint ("TAC"), the operative complaint,

asserting class claims pursuant to 42 U.S.C. § 1983, California Civil Code § 52.1,[1] and the California Constitution, against the City, the Los Angeles Police Department ("LAPD"), former LAPD Chief Charlie Beck, LAPD Officer Lee, LAPD Officer Reyez, and LAPD Officer Vanegas (collectively, "defendants").[2] (See Dkt. 26, TAC at ¶¶ 36-54). Plaintiffs' claims arise out of the City's alleged "bandit taxi" impound policy, practice or custom where a vehicle was impounded for up to 30 days when a city official believed that the vehicle was driven in violation of Los Angeles Municipal Code § 71.02(a), (see id.), which bars the use of vehicles "to pick or attempt to pick up passengers" unless the person or corporation operating the vehicle has a permit to do so. See Los Angeles Municipal Code § 71.02(a). The seizures and impounds were made pursuant to California Vehicle Code § 21100.4.[3] (See Dkt. 130, Motion at 1, 7).

After discovery and the filing of an unsuccessful motion to dismiss by the City, (see Dkt. 18, Court's Order of May 3, 2016; Dkt. 130-1, Corrected Declaration of Donald W. Cook in Support of Third Revised Motion for Class Certification and Preliminary Approval of Class Settlement ("Cook Decl.") at ¶¶ 2, 9), the parties reached a settlement in November 2017. (See Dkt. 130-1, Cook Decl. at ¶ 16). The court denied plaintiffs' prior motions for class certification and preliminary approval due to several deficiencies. (See Dkt. 93, Court's Order of August 22, 2018; Dkt. 97,

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[1] Section 52.1(b) provides that if a person interferes, or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of the constitutional or statutory rights of "any individual or individuals," the Attorney General, or any district or city attorney, may bring a civil action for equitable or injunctive relief. Cal. Civ. Code § 52.1(b). Subdivision (c) allows "[a]ny individual" so interfered with to sue for damages. Id. § 52.1(c).

[2] The TAC also asserts individual claims for violations of plaintiffs' rights under the Fourth Amendment and § 52.1. Plaintiff Lomeli also asserts a claim for malicious prosecution. (Dkt. 26, TAC at ¶¶ 51-54).

[3] California Vehicle Code § 21100.4 provides in relevant part: "A magistrate presented with the affidavit of a peace officer or a designated local transportation officer establishing reasonable cause to believe that a vehicle, described by vehicle type and license number, is being operated as a taxicab or other passenger vehicle for hire in violation of licensing requirements adopted by a local authority under subdivision (b) of Section 21100 shall issue a warrant or order authorizing the peace officer or designated local transportation officer to immediately seize and cause the removal of the vehicle. As used in this section, 'designated local transportation officer' means any local public officer employed by a local authority to investigate and enforce local taxicab and vehicle for hire laws and regulations." Cal. Veh. Code § 21100.4(a)(1).

Court's Order of September 25, 2018; Dkt. 128, Court's Order of May 9, 2019). In the instant Motion, plaintiffs seek an order: (1) certifying a class for settlement purposes; (2) preliminarily approving the settlement; and (3) directing dissemination of class notice. (See Dkt. 130, Motion at 7-8).

The parties have defined the settlement class as "[a]ny registered vehicle owners whose vehicles were seized and impounded by the City at any time from January 11, 2014, through February 15, 2017, under the authority of Cal. Veh. Code § 21100.4." (Dkt. 130-1, Exh. A, Corrected Revised Settlement Agreement ("Settlement Agreement") at ¶ 2). Pursuant to the settlement, the City will pay a total monetary award of $1,700,000, which will be used to pay class members, attorney's fees and costs, class administration, and incentive payments for the class representatives.[4] (Id. at ¶ 22). The attorney's fees and costs may not exceed $385,000.00. (See id. at ¶ 33; Dkt. 130-3, [Proposed] Class Certification and Preliminary Approval Order ("Proposed Order") at ¶ 13; Dkt. 130, Motion at 15). Class administrative fees are estimated to be $17,058, (see Dkt. 130-1, Cook Decl. at ¶ 27), but any amount over $20,000 will be paid by class counsel. (See id.). Plaintiffs estimate the net settlement fund that will be used to pay class members will be $1,260,500.00. (See Dkt. 130, Motion at 15).

LEGAL STANDARD

"[I]n the context of a case in which the parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." Staton v. Boeing Co., 327 F.3d 938, 952 (9th Cir. 2003).

I. CLASS CERTIFICATION.

At the preliminary approval stage, the court "may make either a preliminary determination that the proposed class action satisfies the criteria set out in Rule 23[5] or render a final decision

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[4] Each class representative will receive $1,500 as an incentive payment. (See Dkt. 130, Motion at 15 n. 4). Lomeli will additionally receive $30,000 to settle his individual claim. (See id. at 15).

[5] All "Rule" references are to the Federal Rules of Civil Procedure.

as to the appropriateness of class certification." Smith v. Wm. Wrigley Jr. Co., 2010 WL 2401149, *3 (S.D. Fla. 2010) (internal citation omitted); see also Sandoval v. Roadlink USA Pac., Inc., 2011 WL 5443777, *2 (C.D. Cal. 2011) (citing Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248 (1997)) ("Parties seeking class certification for settlement purposes must satisfy the requirements of Federal Rule of Civil Procedure 23[.]"). "A court considering such a request should give the Rule 23 certification factors 'undiluted, even heightened, attention in the settlement context.'" Sandoval, 2011 WL 5443777, at *2 (quoting Amchem, 521 U.S. at 620, 117 S.Ct. at 2248). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Amchem, 521 U.S. at 620, 117 S.Ct. at 2248.

A party seeking class certification must first demonstrate that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 345, 131 S.Ct. 2541, 2548 (2011). Rule 23(b) is satisfied if:

> (1) prosecuting separate actions by or against individual class members would create a risk of:
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> > (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
> >
> > (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
>
> (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(1)-(3).

The party seeking class certification bears the burden of demonstrating that the proposed class meets the requirements of Rule 23. See Dukes, 564 U.S. at 350, 131 S.Ct. at 2551 ("A party seeking class certification must affirmatively demonstrate his compliance with the Rule – that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.") (emphasis in original). However, courts need not consider Rule 23(b)(3) issues regarding manageability of the class action, as settlement obviates the need for a manageable trial. See In re Hyundai and Kia Fuel Econ. Litig., 926 F.3d 539, 556-57 (9th Cir. 2019) ("The criteria for class certification are applied differently in litigation classes and settlement classes. In deciding whether to certify a litigation class, a district court must be concerned with manageability at trial. However, such manageability is not a concern in certifying a settlement class where, by definition, there will be no trial.").

II. FAIRNESS OF CLASS ACTION SETTLEMENT.

Rule 23 provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "The primary concern of [Rule 23(e)] is the protection of th[e] class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." Officers for Justice v. Civil Serv. Comm'n of the City & Cty. of S.F., 688 F.2d 615, 624 (9th Cir. 1982). Accordingly, a district court must determine whether a proposed class action settlement is "fundamentally fair, adequate, and reasonable." Staton, 327 F.3d at 959 (internal quotation marks omitted); see Fed. R. Civ. Proc. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992) (internal quotation marks and citation omitted).

"If the [settlement] proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). "[S]ettlement approval that takes place prior to formal class certification requires a higher standard of fairness [given t]he dangers of collusion between class counsel and the defendant, as well as the need for additional protections when the settlement is not negotiated by a court designated class representative[.]" Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). As the Ninth Circuit has observed, "[p]rior to formal class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement. Accordingly, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

Approval of a class action settlement requires a two-step process – a preliminary approval followed by a later final approval. See Tijero v. Aaron Bros., Inc., 2013 WL 60464, *6 (N.D. Cal. 2013) ("The decision of whether to approve a proposed class action settlement entails a two-step process."); West v. Circle K Stores, Inc., 2006 WL 1652598, *2 (E.D. Cal. 2006) ("[A]pproval of a class action settlement takes place in two stages."). At the preliminary approval stage, the court "evaluate[s] the terms of the settlement to determine whether they are within a range of possible

judicial approval." Wright v. Linkus Enters., Inc., 259 F.R.D. 468, 472 (E.D. Cal. 2009). Although "[c]loser scrutiny is reserved for the final approval hearing[,]" Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. 2011), "the showing at the preliminary approval stage – given the amount of time, money and resources involved in, for example, sending out new class notices – should be good enough for final approval." Spann v. J.C. Penney Corp., 314 F.R.D. 312, 319 (C.D. Cal. 2016). "At this stage, the court may grant preliminary approval of a settlement and direct notice to the class if the settlement: (1) appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) falls within the range of possible approval." Id. (internal quotation marks omitted); see Harris, 2011 WL 1627973, *7 (same); Cordy v. USS-Posco Indus., 2013 WL 4028627, *3 (N.D. Cal. 2013) ("Preliminary approval of a settlement and notice to the proposed class is appropriate if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.") (internal quotation marks omitted).

DISCUSSION

I. CLASS CERTIFICATION.

A. Rule 23(a) Requirements.

1. **Numerosity**.

The first prerequisite of class certification requires that the class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). Although impracticability does not hinge only on the number of members in the putative class, joinder is usually impracticable if a class is "large in numbers." See Jordan v. Cty. of Los Angeles, 669 F.2d 1311, 1319 (9th Cir.), vacated on other grounds, 459 U.S. 810 (1982) (class sizes of 39, 64, and 71 are sufficient to satisfy the numerosity requirement). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); see Tait v. BSH Home Appliances Corp., 289 F.R.D. 466, 473 (C.D. Cal. 2012) ("A proposed class of at least forty

members presumptively satisfies the numerosity requirement.").

Here, the class is so numerous that joinder is impracticable. According to plaintiffs, there are approximately 1,477 class members, (see Dkt. 130, Motion at 9), which easily exceeds the minimum threshold for numerosity under Rule 23(a)(1).

2. **Commonality**.

The commonality requirement is satisfied if "there are questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). Commonality requires plaintiffs to demonstrate that their claims "depend upon a common contention . . . [whose] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Dukes, 564 U.S. at 350, 131 S.Ct. at 2551; see Wolin v. Jaguar Land Rover N. Am., LLC, 617 F.3d 1168, 1172 (9th Cir. 2010) (The commonality requirement demands that "class members' situations share a common issue of law or fact, and are sufficiently parallel to insure a vigorous and full presentation of all claims for relief.") (internal quotation marks omitted). "The plaintiff must demonstrate the capacity of classwide proceedings to generate common answers to common questions of law or fact that are apt to drive the resolution of the litigation." Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012) (internal quotation marks omitted). "This does not, however, mean that every question of law or fact must be common to the class; all that Rule 23(a)(2) requires is a single significant question of law or fact." Abdullah v. U.S. Sec. Assocs., Inc., 731 F.3d 952, 957 (9th Cir. 2013) (emphasis and internal quotation marks omitted); see Mazza, 666 F.3d at 589 (characterizing commonality as a "limited burden[,]" stating that it "only requires a single significant question of law or fact"). Proof of commonality under Rule 23(a) is "less rigorous" than the related preponderance standard under Rule 23(b)(3). See Mazza, 666 F.3d at 589; Hanlon, 150 F.3d at 1019. "The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019.

The instant case involves common class-wide issues that are apt to drive the resolution of the case. Specifically, there is a significant common question as to whether the City's impound policy or "bandit taxi" program were constitutional and compliant with state law. (See Dkt. 26,

TAC at ¶¶ 9-11, 26; Dkt. 130, Motion at 9-10; Dkt. 130-1, Exh. E (Impound Policy)). As plaintiffs note, the City "admits it never sought a warrant before removing a vehicle from the street" pursuant to the impound policy and bandit taxi program. (See Dkt. 130, Motion at 9); Aichele v. City of Los Angeles, 314 F.R.D. 478, 488 (C.D. Cal. 2013) ("In the civil rights context, commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.") (internal quotation marks omitted).

3. **Typicality**.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011) (internal quotation marks and citation omitted). To demonstrate typicality, plaintiffs' claims must be "reasonably co-extensive with those of absent class members[,]" although "they need not be substantially identical." Hanlon, 150 F.3d at 1020; see Ellis, 657 F.3d at 984 ("Plaintiffs must show that the named parties' claims are typical of the class."). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." Ellis, 657 F.3d at 984 (internal quotation marks and citation omitted).

Here, the claims of the representative plaintiffs are typical of the claims of the class. Their claims arise from the same nucleus of facts as the class – the impoundment of their vehicles pursuant to the City's impound policy and bandit taxi program, for which they had "to pay to get their vehicles out of impoundment" – and are based on the same legal theories, i.e., the City's policy and program violated the Fourth Amendment and state law. (See Dkt. 26, TAC; Dkt. 130, Motion at 11); see, e.g., Shelton v. Hal Hays Constr., Inc., 2017 WL 1439683, *4 (finding typicality requirement met where claims arose from same underlying conduct, namely defendant's use of a form that violated federal statute); Brown v. NFL Players Ass'n., 281 F.R.D. 437, 442 (C.D. Cal. 2012) (typicality satisfied where plaintiff's claims were based on "the same event or practice or course of conduct that [gave] rise to the claims of other class members and . . . are based on the same legal theory") (internal quotation marks omitted). Although Lomeli asserts an individual

claim for damages based on his false arrest and malicious prosecution allegations, (see Dkt. 26, TAC at ¶¶ 51-54), such a claim does not appear to undermine the typicality factor because Lomeli and the class members suffered impoundment of their vehicles as part of the bandit taxi program and seek damages based on such conduct. (See id.). Finally, the court is not aware of any facts that would subject the class representatives' class claims "to unique defenses which threaten to become the focus of the litigation." Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (internal quotation marks omitted).

4. **Adequacy of Representation**.

"The named Plaintiffs must fairly and adequately protect the interests of the class." Ellis, 657 F.3d at 985 (citing Fed. R. Civ. P. 23(a)(4)). "To determine whether [the] named plaintiffs will adequately represent a class, courts must resolve two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Id. (internal quotation marks omitted). "Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees." Id.

Here, the proposed class representatives do not appear to have any conflicts of interest with the absent class members. As plaintiffs note, their claims and those of the class are "based on wrongful seizure and impoundment of their vehicles and the City's Impound Policy generally applicable to all." (Dkt. 130, Motion at 12). Additionally, as noted above, although Lomeli asserts an unlawful arrest and malicious prosecution claim, (see Dkt. 26, TAC at ¶¶ 51-54), he also asserts a class claim based on the impoundment of his vehicle based on the City's Impound Policy, which is applicable to all class members. (See id. at ¶¶ 36-44). Given plaintiffs' representation that each "class member should recover at least the full amount of his or her out-of-pocket cost and will likely recover more[,]" (see Dkt. 130, Motion at 16), the court finds that the adequacy factor is not undermined by Lomeli's individual § 1983 claim. Moreover, the named plaintiffs recognize that "it is [their] responsibility to represent the interests of the class as a whole and not just [their] own personal interests." (Dkt. 130-2, Declaration of Leonardo Gonzalez-Tzita

("Gonzalez-Tzita Decl.") at ¶ 6; id., Declaration of Esteban Diego Esteban ("Esteban Decl.") at ¶ 6; id., Declaration of Sidonio Lomeli ("Lomeli Decl.") at ¶ 5). Under the circumstances, "[t]he adequacy-of-representation requirement is met here because Plaintiff[s][have] the same interests as the absent Class Members[.]" Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 442 (E.D. Cal. 2013).

Finally, as noted earlier, adequacy "also factors in competency and conflicts of class counsel." Amchem, 521 U.S. at 626 n. 20, 117 S.Ct. at 2251. Here, the Settlement Agreement provides that the court appoint Donald W. Cook ("Cook") as class counsel. (See Dkt. 130-1, Exh. A, Settlement Agreement at ¶ II.5 (defining class counsel)). Cook states that he has "represented other plaintiffs who claimed their vehicles were wrongly seized and impounded not only by the City of Los Angeles, but by other entities as well[,]" and that he has experience in representing plaintiffs in other class action civil rights lawsuits. (See Dkt. 130-1, Cook Decl. at ¶¶ 29-30). Based on counsel's representations, and having observed his diligence in litigating this case, the court finds that plaintiffs' counsel is competent, and there are no issues as to the adequacy of representation. See Barbosa, 297 F.R.D. at 443 ("There is no challenge to the competency of the Class Counsel, and the Court finds that Plaintiffs are represented by experienced and competent counsel who have litigated numerous class action cases.").

B. Rule 23(b) Requirements.

Certification under Rule 23(b)(3) is proper "whenever the actual interests of the parties can be served best by settling their differences in a single action." Hanlon, 150 F.3d at 1022 (internal quotation marks omitted). The rule requires two different inquiries, specifically a determination as to whether: (1) "questions of law or fact common to class members predominate over any questions affecting only individual members[;]" and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); see Spann, 314 F.R.D. at 321-22.

1. **Predominance**.

"The Rule 23(b)(3) predominance inquiry tests whether [the] proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623, 117

S.Ct. at 2249. "Rule 23(b)(3) focuses on the relationship between the common and individual issues. When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." Hanlon, 150 F.3d at 1022 (internal quotation marks and citations omitted); see In re Wells Fargo Home Mortg. Overtime Pay Litig., 571 F.3d 953, 959 (9th Cir. 2009) ("[T]he main concern in the predominance inquiry . . . [is] the balance between individual and common issues."). Additionally, the class damages must be sufficiently traceable to plaintiff's liability case. See Comcast Corp. v. Behrend, 569 U.S. 27, 35, 133 S.Ct. 1426, 1433 (2013).

Here, the court is persuaded that "[a] common nucleus of facts and potential legal remedies dominates this litigation." Hanlon, 150 F.3d at 1022. As discussed above, there is a significant common question as to whether the City's impound policy and "bandit taxi" program were constitutional and compliant with state law. The determination of that question could establish defendants' liability on a class-wide basis. In other words, "despite the existence of minor factual differences between the potential class members," Clesceri, 2011 WL 320998, *7 (internal quotation marks omitted), the answer to this question would drive the resolution of the litigation, "as the common issues predominate over varying factual predicates[.]" Id. (internal quotation marks omitted); see, e.g., Aichele, 314 F.R.D. at 495-98 (finding common questions predominate in civil rights class action). Moreover, the relief sought applies to all class members and is traceable to plaintiffs' liability case. See Comcast, 133 S.Ct. at 1433. In short, there are overriding issues that predominate over all others in this litigation. See Tyson Foods, Inc. v. Bouaphakeo, 136 S.Ct. 1036, 1045 (2016) ("When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.") (internal quotation marks omitted).

2. **Superiority**.

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case" and "necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." Hanlon, 150 F.3d at 1023. Rule 23(b)(3) provides a list of four non-exhaustive factors relevant to superiority. See Fed. R. Civ. P. 23(b)(3)(A)-(D).

The first factor considers "the class members' interests in individually controlling the prosecution or defense of separate actions." Fed. R. Civ. P. 23(b)(3)(A). "This factor weighs against class certification where each class member has suffered sizeable damages or has an emotional stake in the litigation." Barbosa, 297 F.R.D. at 444. Here, plaintiffs do not assert any class claims for emotional distress,[6] nor is there any indication that the amount of damages any individual class member could recover is significant or substantially greater than the potential recovery of any other class member. (See, generally, Dkt. 26, TAC; see Dkt. 130-1, Cook Decl. at ¶ 24). The alternative method of resolution is individual claims for a relatively modest amount of damages, but such claims would likely never be brought, as "litigation costs would dwarf potential recovery." Hanlon, 150 F.3d at 1023; see Leyva v. Medline Indus., Inc., 716 F.3d 510, 515 (9th Cir. 2013) ("In light of the small size of the putative class members' potential individual monetary recovery, class certification may be the only feasible means for them to adjudicate their claims. Thus, class certification is also the superior method of adjudication."); Bruno v. Quten Research Inst., LLC, 280 F.R.D. 524, 537 (C.D. Cal. 2011) ("Given the small size of each class member's claim, class treatment is not merely the superior, but the only manner in which to ensure fair and efficient adjudication of the present action."); Aichele, 314 F.R.D. at 497 (finding civil rights class action superior to individual cases because "the cost of prosecuting [hundreds of] individual civil rights cases based on the same set of facts would likely far exceed individual damages

[6] As noted above, only Lomeli has an individual claim arising from his arrest and prosecution. The class claims are not based on emotional distress nor is there indication that the amount of damages any individual class member could recover is significant such that they would be feasible on an individual basis.

awards"). In short, "there is no evidence that Class members have any interest in controlling prosecution of their claims separately nor would they likely have the resources to do so." Munoz v. PHH Corp., 2013 WL 2146925, *26 (E.D. Cal. 2013).

The second factor is "the extent and nature of any litigation concerning the controversy already begun by or against class members[.]" Fed. R. Civ. P. 23(b)(3)(B). While any class member who wishes to control his or her own case may opt out of the class, see Fed. R. Civ. P. 23(c)(2)(B)(v), "other pending litigation is evidence that individuals have an interest in controlling their own litigation[.]" 2 Newberg on Class Actions, § 4:70 at p. 277 (5th ed.) (emphasis omitted). Here, there is no indication that any class member is involved in any other litigation concerning the claims in this case. (See, generally, Dkt. 130-1, Motion).

The third factor is "the desirability or undesirability of concentrating the litigation of the claims in the particular forum," and the fourth factor is "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(C)-(D). As noted above, "[i]n the context of settlement . . . the third and fourth factors are rendered moot and are irrelevant." Barbosa, 297 F.R.D. at 444; see Amchem, 521 U.S. at 620, 117 S.Ct. at 2248 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.") (citation omitted).

The only factors in play here weigh in favor of class treatment. Further, the filing of separate suits by thousands of other class members "would create an unnecessary burden on judicial resources." Barbosa, 297 F.R.D. at 445. Under the circumstances, the court finds that the superiority requirement is satisfied.

II. FAIRNESS, REASONABLENESS, AND ADEQUACY OF THE PROPOSED SETTLEMENT.

A. The Settlement is the Product of Arm's-Length Negotiations.

"This circuit has long deferred to the private consensual decision of the parties." Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit has "emphasized" that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that

the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." Id. (internal quotation marks omitted). When the settlement is "the product of an arms-length, non-collusive, negotiated resolution[,]" id., courts afford the parties the presumption that the settlement is fair and reasonable. See Spann, 314 F.R.D. at 324 ("A presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced capable counsel after meaningful discovery.") (internal quotation marks and citation omitted); In re Netflix Privacy Litig., 2013 WL 1120801, *4 (N.D. Cal. 2013) ("Courts have afforded a presumption of fairness and reasonableness of a settlement agreement where that agreement was the product of non-collusive arms' length negotiations conducted by capable and experienced counsel.").

Here, the City defended against the claims and filed a motion to dismiss. (See, e.g., Dkt. 14, Defendant City of Los Angeles' Motion to Dismiss Plaintiffs' First Amended Complaint). With respect to discovery, plaintiffs' counsel states that he reviewed the City's records and policies regarding the "bandit taxi" program and the City's Impound Policy, and that he took the depositions of City and third-party personnel. (See Dkt. 130-1, Cook Decl. at ¶¶ 2, 9). According to class counsel, the parties reached a settlement agreement "after several months" of "arms-length negotiations." (Id. at ¶ 16).

Based on the evidence and record before the court, the court is persuaded that the parties thoroughly investigated and considered their own and the opposing party's positions. The parties had a sound basis for measuring the terms of the settlement against the risks of continued litigation, and there is no evidence that the settlement is "the product of fraud or overreaching by, or collusion between, the negotiating parties[.]" Rodriguez, 563 F.3d at 965 (quoting Officers for Justice, 688 F.2d at 625).

B. The Amount Offered in Settlement Falls Within a Range of Possible Judicial Approval and is a Fair and Reasonable Outcome for Class Members.

1. **Recovery for Class Members.**

The parties have defined the settlement class as "[a]ny registered vehicle owners whose

vehicles were seized and impounded by the City at any time from January 11, 2014, through February 15, 2017, under the authority of Cal. Veh. Code § 21100.4." (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 2). The relief available to the class will come from a $1,700,000 non-reversionary settlement fund, (see id. at ¶ 22; Dkt. 130, Motion at 16), after all court-approved deductions for attorney's fees, costs, settlement administration fees, and the class representative incentive payments. (See Dkt. 30, Motion at 15). According to plaintiffs, "[b]ecause computer data establish how long each vehicle was held and the charges associated with that impound, the parties know the amount each class member actually paid to retrieve his or her vehicle . . .[and that] each class member should recover at least the full amount of his or her out-of-pocket cost and will likely recover more."[7] (Id. at 16).

Under the circumstances, the court finds the settlement is fair, reasonable, and adequate, particularly when viewed in light of the litigation risks in this case. Even putting aside any defenses and, assuming class certification was granted and upheld on appeal, defeating summary judgment, winning the case at trial, and then sustaining the final judgment on appeal would be very difficult. In short, the risks of continued litigation are significant, and the court takes these real risks into account. In short, given the significant risks and delay of continued litigation in this case, the court is persuaded that the benefits to the class fall within the range of reasonableness. See, e.g., Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.") (internal quotation marks omitted).

2. **Release of Claims**.

The court also considers whether the settlement contains an overly broad release of liability. See 4 Newberg on Class Actions § 13:15 at pp. 326-27 (5th ed. 2014) ("Beyond the value

[7] Individual payments will be determined using a formula based on a percentage ratio of the amount the class member paid to recover his or her vehicle from impound as compared to the total amount paid by all class members. (See Dkt. 130-1, Cook Decl. at ¶ 20). A second round of payments is proposed using the same formula for distribution of uncashed checks. (Id.).

of the settlement, courts have rejected preliminary approval when the proposed settlement contains obvious substantive defects such as . . . overly broad releases of liability."); see, e.g., Fraser v. Asus Computer Int'l, 2012 WL 6680142, *3 (N.D. Cal. 2012) (denying preliminary approval of proposed settlement that provided defendant a "nationwide blanket release" in exchange for payment "only on a claims-made basis," without the establishment of a settlement fund or any other benefit to the class).

Here, plaintiffs and class members who do not exclude themselves from the settlement will be "enjoin[ed]" from asserting against any released party (as defined) "any and all claims for damages or other relief which any such class member had, has, or may have in the future in any way arising out of the facts alleged, or in any way related to the claims for relief pleaded, in this case[.]" (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 28). With the understanding that, under the release, the settlement class members are not giving up claims unrelated to those asserted in this action, the court finds that the release adequately balances fairness to plaintiffs and the absent class members with defendant's' interest in ending this litigation. See, e.g., Fraser, 2012 WL 6680142, at *4 (recognizing defendant's "legitimate business interest in 'buying peace' and moving on to its next challenge" as well as the need to prioritize "[f]airness to absent class member[s]").

C. The Settlement Agreement Does not Improperly Grant Preferential Treatment to the Class Representatives.

"Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit." Radcliffe v. Experian Info. Sols. Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). The Ninth Circuit has instructed "district courts to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." Id. The court must examine whether there is a "significant disparity between the incentive awards and the payments to the rest of the class members" such that it creates a conflict of interest. See id. at 1165. "In deciding whether [an incentive] award is warranted, relevant factors include the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." Cook v. Niedert,

142 F.3d 1004, 1016 (7th Cir. 1998).

Pursuant to the settlement, each class representative will receive an incentive award of $1,500, for their time and effort. (Dkt. 130-1, Cook Decl. at ¶ 18). The incentive payments are "not . . . contingent on the Named plaintiffs' acceptance of the settlement." (Id.; see also Dkt. 130-2, Gonzalez-Tzita Decl. at ¶ 16; id., Esteban Decl. at ¶ 16; id., Lomeli Decl. at ¶ 15). Because the incentive payments are presumptively reasonable, see Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 335 (N.D. Cal. 2014), and are not conditioned on the named plaintiffs' approval of the settlement, the court is persuaded that there is no conflict of interest between the named plaintiffs and the absent class members.[8]

D. Class Notice and Notification Procedures.

Upon settlement of a certified class, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Federal Rule of Civil Procedure 23(c)(2) requires the "best notice that is practicable under the circumstances, including individual notice" of particular information. See Fed. R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule 23(b)(3)).

A class action settlement "[n]otice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." In re Hyundai, 926 F.3d at 567 (internal quotation marks omitted). "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 113 (2d Cir. 2005); Low v. Trump University, LLC, 881 F.3d 1111, 1117 (9th Cir. 2018) ("The yardstick against which we measure the sufficiency of notices in class action proceedings is one of reasonableness.") (internal quotation marks omitted). Settlement notices "are sufficient if they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files,

[8] The $30,000 payment to Lomeli also does not create a conflict of interest since it resolves Lomeli's individual malicious prosecution claim.

and that any class member may appear and be heard at the hearing[.]" Gooch v. Life Inv'rs Ins. Co. of Am., 672 F.3d 402, 423 (6th Cir. 2012) (internal quotation marks omitted); see Wershba v. Apple Comput., Inc., 91 Cal.App.4th 224, 252 (2001), disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc., 4 Cal.5th 260, 269 (2018) ("As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members."). The notice should provide sufficient information to allow class members to decide whether they should accept the benefits of the settlement, opt out and pursue their own remedies, or object to its terms. See In re Integra Realty Res., Inc., 262 F.3d 1089, 1111 (10th Cir. 2001) ("The standard for the settlement notice under Rule 23(e) is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options.").

Here, plaintiffs propose that JND Legal Administration ("JND") be appointed as the Class Administrator. (See Dkt. 130, Motion at 15). Class members will receive notice by first class mail, (see Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 34), which will consist of the Notice of Class Action, Proposed Class Settlement and Hearing ("Notice") (see Dkt. 130-1, Exh. B), Class Action Opt-Out Form ("Opt-Out Form) (id. at Exh. C), and an Update Address Form ("Address Form") (see id. at Exh. D) (collectively, "Notice Packet"). (See Dkt. 130-1, Exh. A, Settlement Agreement at ¶¶ 11, 13, 35). In addition to mailing the Notice Packet, JND will establish a "dedicated website with downloadable form, and offering online submission forms." (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 37); see 3 Newberg on Class Actions § 8:17, at 283 (5th ed. 2014) ("[A]s the internet develops, it is easy, and relatively costless, to provide class members free access to a set of documents in the lawsuit at settlement, not just to a synopsis describing the settlement. A settlement website may encompass content ranging from the complaint to the settlement agreement and fee petition.").

The Notice describes the nature of the action, including the class claims. (See Dkt. 130-1, Notice at 1 & 3-4); see also Fed. R. Civ. P. 23(c)(2)(B)(i) & (iii). It provides the definition of the class, (see Dkt. 130-1, Notice at 1); see also Fed. R. Civ. P. 23(c)(2)(B)(ii), and explains the terms of the settlement, including the settlement amount, the distribution of that amount, and the release.

(See Dkt. 130-1, Notice at 1, 4-6). It includes an explanation that lays out the class members' options under the settlement: they may remain in the class, object to the settlement but still remain in the class, or exclude themselves from the settlement and pursue their claims separately against defendants. (See id. at 1-2, 6-8); see also Fed. R. Civ. P. 23(c)(2)(B)(v)-(vi). Finally, the Notice provides information about the Final Fairness Hearing. (See Dkt. 130-1, Notice at 7-8).

Based on the foregoing, the court finds there is no alternative method of distribution that would be more practicable here, or any more reasonably likely to notify the class members. Under the circumstances, the court finds that the procedure for providing notice and the content of the class notice constitute the best practicable notice to class members and complies with the requirements of due process.

E. Summary.

In short, the court's preliminary evaluation of the Settlement Agreement does not disclose grounds to doubt its fairness "such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, . . . or excessive compensation for attorneys." Manual for Complex Litigation § 21.632 (4th ed. 2004); see also Spann, 314 F.R.D. at 323.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiffs' Third Revised Motion for Class Certification and Preliminary Approval of Class Settlement **(Document No. 130)** is **granted** upon the terms and conditions set forth in this Order.

2. The court preliminarily certifies the class, as defined in ¶ 2 of the Corrected Revised Settlement Agreement ("Settlement Agreement") (Dkt. 130-1, Exh. A) for purposes of settlement.

3. The court preliminarily appoints plaintiffs Leonardo Gonzalez-Tzita, Esteban Diego Esteban, and Sidonio Lomeli as class representatives for settlement purposes.

4. The court preliminarily appoints Donald W. Cook as class counsel for settlement purposes.

5. The court preliminarily finds that the terms of the settlement are fair, reasonable and adequate, and comply with Rule 23(e) of the Federal Rules of Civil Procedure.

6. The court approves the form, substance, and requirements of the class Notice, (Dkt.130-1, Exh. B), the Opt-Out Form, (id. at Exh. C), and the Update Form. (Id. at Exh. D). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

7. JND shall complete dissemination of class notice, in accordance with the Settlement Agreement, no later than **January 17, 2020**.

8. Plaintiffs shall file a motion for an award of class representative incentive payments and attorney's fees and costs no later than **February 14, 2020,** and notice it for hearing for the date of the final approval hearing set forth below.

9. Any class member who wishes to: (a) object to the settlement, including the requested attorney's fees, costs and incentive awards; or (b) exclude him or herself from the settlement must file his or her objection to the settlement or request for exclusion no later than **March 17, 2020**, in accordance with the Notice.

10. Plaintiffs shall, no later than **April 30, 2020,** file and serve a motion for final approval of the settlement and a response to any objections to the settlement. The motion shall be noticed for hearing for the date of the final approval hearing set forth below.

11. Defendants may file and serve a memorandum in support of final approval of the Settlement Agreement and/or in response to objections no later than **May 7, 2020**.

12. Any class member who wishes to appear at the final approval (fairness) hearing, either on his or her own behalf or through an attorney, to object to the settlement, including the requested attorney's fees, costs or incentive award, shall, no later than **May 12, 2020**, file with the court a Notice of Intent to Appear at Fairness Hearing.

13. A final approval (fairness) hearing is hereby set for **May 21, 2020,** at **10:00 a.m.** in Courtroom 6D of the First Street Courthouse, to consider the fairness, reasonableness, and adequacy of the Settlement as well as the award of attorney's fees and costs to class counsel, and service award to the class representative.

14. All proceedings in the Action, other than proceedings necessary to carry out or enforce the Settlement Agreement or this Order, are stayed pending the final fairness hearing and the

court's decision whether to grant final approval of the settlement.

Dated this 9th day of December, 2019.

/s/
Fernando M. Olguin
United States District Judge