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: FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Having reviewed and considered plaintiffs' Motion for Final Approval of Class Certification and Settlement; Award of Supplemental Attorneys' Fees, (Dkt.145, "Motion"), and Motion for Approval of Class Representatives' Incentive Awards and Award of Attorneys' Fees and Costs, (Dkt. 142, "Fees Motion"), and the oral argument presented during the final fairness hearing held on August 20, 2020, 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, pursuant to which the City impounded a vehicle for up to 30 days when a city official believed that a vehicle was driven in violation of Los Angeles Municipal Code § 71.02(a), (see id. at ¶¶ 9-11), 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. 141, Court's Order of December 9, 2019 ("Preliminary Approval Order" or "PAO" at 2).

After discovery and the filing of an unsuccessful motion to dismiss by the City, the parties reached a settlement in November 2017. (See Dkt. 141, PAO at 2). The parties define 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

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[1] Section 52.1(b) provides that if a person interferes, or attempts to interfere, by threat, 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 California Civil Code § 52.1. (See Dkt. 26, TAC at ¶¶ 45-50). Plaintiff Lomeli also asserts a claim for malicious prosecution. (See id. 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).

("Settlement Agreement") at ¶ 2; Dkt. 141, PAO at 3).

Pursuant to the settlement, the City will pay a total amount of $1,700,000, which will be used to pay class members, attorney's fees and costs, class administration costs, and incentive payments for the class representatives.[4] (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 22; Dkt. 141, PAO at 3). The attorney's fees and costs may not exceed $385,000.00. (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 33; Dkt. 130-3, Proposed Class Certification and Preliminary Approval Order ("Proposed Order") at 2; Dkt. 141, PAO at 3). Class administrative fees are estimated to be $17,058, (see Dkt. 141, PAO at 3), and any amount over $20,000 would be paid by class counsel. (See id.).

On December 9, 2019, the court granted preliminary approval of the settlement, appointed JND Legal Administration ("JND") as the settlement administrator, and directed JND to provide notice to class members. (See Dkt. 141, PAO at 20-21). After the court issued its Preliminary Approval Order, class notice was mailed to 1,267 class members.[5] (See Dkt. 145, Motion at 4). As of April 23, 2020, JND had received 56 requests for exclusion and no objections.[6] (See Dkt. 145, Cook Decl. at ¶ 3 & Exh. A (JND Settlement Statistics); see, generally, Dkt. (no objections filed with the court)).

Plaintiffs now seek: (1) final approval of the settlement; (2) attorney's fees and costs; and (3) incentive payments for plaintiffs. (See Dkt. 145, Motion at 3; Dkt. 142, Fees Motion at 1-2).

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[4] Each class representative will receive $1,500 as an incentive payment. (See Dkt. 141, PAO at 3 n. 4). Lomeli will additionally receive $30,000 to settle his individual claims. (See id.).

[5] With respect to the dissemination of the class notice, 429 were deemed undeliverable. (Dkt. 145, Motion at 4). Plaintiffs provided a document entitled, "Settlement Statistics," that addressed JND's implementation of the notice program. (See Dkt. 145, Declaration of Donald W. Cook ("Cook Decl.") at ¶¶ 2-3 & Exh. A (JND Settlement Statistics)).

[6] Class members Victor Fiallos, Eloy Fresneda, and Alfonso Pacheco appeared at the Final Fairness hearing, and the court determined that they merely sought information and clarification regarding the action, and did not indicate any intention to object to the settlement. (See Dkt. 152, Court's Order of August 20, 2020). In any event, the deadline for objecting to the settlement expired several months ago.

LEGAL STANDARD

Federal Rule of Civil Procedure 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[7] 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 City & Cty. of S.F., 688 F.2d 615, 624 (9th Cir. 1982). 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) (quoting Officers for Justice, 688 F.2d at 625), who must examine the settlement for "overall fairness[.]" In re Hyundai and Kia Fuel Economy Litig., 926 F.3d 539, 569 (9th Cir. 2019). The court may not "delete, modify or substitute certain provisions." Id. (internal quotation marks omitted). "[T]he settlement must stand or fall as a whole." Officers for Justice, 688 F.2d at 630.

In order to approve a settlement in a class action, the court must conduct a two-step inquiry. First, the court must determine whether the notice requirements of Rule 23(c)(2)(B) have been satisfied. Second, it must conduct a hearing to determine whether the settlement agreement is "fair, reasonable, and adequate[.]" Fed. R. Civ. P. 23(e)(2); Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003) (discussing the Rule 23(e)(2) standard). In determining whether a settlement is fair, reasonable, and adequate, the court must weigh some or all of the following factors: "(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 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement."[8] In re Bluetooth Headset Prod. Liab.

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

[8] The 2018 amendments to Rule 23(e) provide further guidance for determining whether a settlement is fair, reasonable, and adequate, including whether: "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the

Litig., 654 F.3d 935, 946 (9th Cir. 2011) (quoting Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)); Campbell v. Facebook, Inc., 951 F.3d 1106, 1121 (9th Cir. 2020) (same).[9]

However, when "a settlement agreement is negotiated prior to formal class certification, consideration of these eight [] factors alone is not enough[.]" Bluetooth, 654 F.3d at 946 (emphasis in original). This is because, "[p]rior to formal class certification, there is an even greater potential for a breach of fiduciary duty owed the class during settlement." Id.; see Koby v. ARS Nat'l Servs., Inc., 846 F.3d 1071, 1079 (9th Cir. 2017) ("When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members."). Thus, "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." Bluetooth, 654 F.3d at 946. In assessing such an agreement, courts should look for signs of collusion, subtle or otherwise, including "(1) when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded[;]" "(2) when the parties negotiate a 'clear sailing'

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class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). The Advisory Committee notes to the 2018 amendments state that "[t]he goal of [the] amendment [was] not to displace any factor" that courts considered prior to the amendment, "but rather to focus . . . on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." 2018 Adv. Comm. Notes to Amendments to Rule 23(e). The court addressed several of the factors set forth in the amended Rule 23(e) during the preliminary approval process. (See, e.g., Dkt. 141, PAO at 14-15 (considering whether the settlement was the product of arm's-length negotiations); id. at 15-17 (addressing whether recovery for the class is fair, adequate, and reasonable)). In evaluating the settlement, the court will consider the factors set forth by the Ninth Circuit, while also taking into account the Rule 23(e) amendments.

[9] Although the settlement approval in Campbell occurred prior to the 2018 amendments to Rule 23(e), the Ninth Circuit noted that applying the amendments would not change its conclusions. See Campbell, 951 F.3d at 1121 n. 10 (affirming the district court's approval of the settlement).

arrangement[;]"[10] and "(3) when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund[.]" Id. at 947 (internal quotation marks and citations omitted).

DISCUSSION

I. FINAL APPROVAL OF CLASS SETTLEMENT.

A. Class Certification.

In its order granting preliminary approval, the court certified the class pursuant to Rule 23(b)(3). (See Dkt. 141, PAO at 7-14, 20). Because circumstances have not changed, the court hereby affirms its order certifying the class for settlement purposes under Rule 23(e). See, e.g., Gonzalez v. BMC West, LLC, 2018 WL 6318832, *5 (C.D. Cal. 2018) ("In its Preliminary Approval Minute Order, the Court certified the Settlement Class in this matter under Rules 23(a) and 23(b)(3). Accordingly, the Court need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b).") (internal quotation marks and citation omitted).

B. Rule 23(c) Notice Requirements.

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2) and, upon settlement of a class action, "[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)(B). Rule 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)).

After undertaking the required examination, the court approved the form of the proposed class notice. (See Dkt. 141, PAO at 18-20). Also, as noted above, the notice program was implemented by JND. Accordingly, based on the record and its prior findings, the court finds that the class notice and the notice process fairly and adequately informed the class members of the

[10] The Ninth Circuit defines a "clear sailing" agreement as one "providing for the payment of attorneys' fees separate and apart from class funds," Bluetooth, 654 F.3d at 947, and also as one where "the defendant agrees not to oppose a petition for a fee award up to a specified maximum value." Id. at 940 n. 6.

nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See id.).

C. Whether the Class Settlement is Fair, Adequate and Reasonable.

1. **The Strength of Plaintiffs' Case, and the Risk, Expense, Complexity, and Duration of Further Litigation**.

In evaluating the strength of the case, the court should assess "objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach [a settlement]." Adoma v. Univ. of Phoenix, Inc., 913 F.Supp.2d. 964, 975 (E.D. Cal. 2012) (internal quotation marks omitted). "In assessing the risk, expense, complexity, and likely duration of further litigation, the court evaluates the time and cost required." Id. at 976.

Here, in granting preliminary approval of the settlement, the court recognized that the risks of continued litigation were "significant" and, when weighed against those risks, and the delays associated with continued litigation, the "benefits to the class [fell] within the range of reasonableness." (See Dkt. 141, PAO at 16). The settlement here affords class members immediate monetary benefits in the face of various defenses to plaintiff's claims, and substantial delay. (See id.; see also Dkt. 145, Motion at 6). Under the circumstances, the court finds it significant that the class members will receive "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal quotation marks omitted). In short, the court finds that these factors support approval of the settlement.

2. **The Risk of Maintaining Class Action Status Through Trial**.

Because the parties reached settlement prior to the filing of a motion for class certification, plaintiffs faced a risk that the class would not be certified. Accordingly, this factor weighs in favor of approving the settlement. See, e.g., Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 966 (9th Cir. 2009) ("At the time of settlement, the risk remained that the nationwide class might be decertified[.]"); Rosado v. Ebay Inc., 2016 WL 3401987, *4 (N.D. Cal. 2016) ("Although a class can be certified for settlement purposes, the notion that a district court could decertify a class at

any time is an inescapable and weighty risk that weighs in favor of a settlement.").

3. **The Amount Offered in Settlement**.

"[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotation marks omitted). In granting preliminary approval, the court concluded that the settlement benefits were fair, adequate, and reasonable in light of the delay and litigation risks in continuing to prosecute the case. (See Dkt. 141, PAO at 16); see also Linney, 151 F.3d at 1242 ("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). Accordingly, this factor also weighs in favor of final approval.

4. **The Extent of Discovery Completed and the Stage of Proceedings**.

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." Spann v. J.C. Penney Corp., 211 F.Supp.3d 1244, 1256 (C.D. Cal. 2016) (quoting Nat'l Rural Telecomms., 221 F.R.D. at 527). The court previously examined these factors at length, noting that the parties had engaged in discovery, including the depositions of the City and third-party personnel, and "thoroughly investigated and considered their own and the opposing parties' positions[,]" which enabled them to develop "a sound basis for measuring the terms of the settlement against the risks of continued litigation[.]" (See Dkt. 141, PAO at 15). In other words, "the parties entered the settlement discussions with a substantial understanding of the factual and legal issues from which they could advocate for their respective positions." Spann, 211 F.Supp.3d at 1256; Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 447 (E.D. Cal. 2013) ("What is required is that sufficient discovery has been taken or investigation completed to enable counsel and the court to act intelligently.") (internal quotation marks omitted).

5. **The Experience and Views of Counsel**.

"Great weight is accorded to the recommendation of counsel, who are most closely

acquainted with the facts of the underlying litigation. This is because parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation." Spann, 211 F.Supp.3d at 1257 (internal quotation marks omitted); see Fed. R. Civ. P. 23(e)(2)(A) (courts should consider whether "class counsel have adequately represented the class"). Here, class counsel, who adequately represented the class, (see Dkt. 41, PAO at 11), views the settlement as fair. (Dkt. 145, Motion) (seeking approval of settlement). Thus, this factor also supports approval of the settlement.

6. **The Presence of a Governmental Participant**.

The City is a local governmental entity that undoubtedly supports the settlement. (See Dkt. 130-1, Exh. A, Settlement Agreement). Thus, this factor also supports approval of the settlement. See Garcia v. City of King City, 2017 WL 363257, *7 (N.D. Cal. 2017) ("Defendant King City is a local governmental authority, who also agrees to the terms of the Settlement Agreement. Thus, this factor weighs in favor of approval.").

7. **The Reaction of Class Members to the Proposed Settlement**.

The absence of a large number of objections and exclusions to a proposed class action settlement supports approval of a settlement. See Spann, 211 F.Supp.3d at 1257 ("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 settlement action are favorable to the class members.") (internal quotation marks omitted). Here, the reaction of the class has been positive. Only 56 class members opted-out and, significantly, there were no objections. (See Dkt. 145, Cook Decl. at ¶ 3 & Exh. A) (JND Settlement Statistics); (see, generally, Dkt.) (no objections filed with the court). The lack of objections and limited requests for exclusion support approval of the settlement. See, e.g., Franco v. Ruiz Food Prods., Inc., 2012 WL 5941801, *14 (E.D. Cal. 2012) (finding this factor weighed in favor of approval where only two out of 2,055 class members – less than one percent – opted out, and there were no objections to the settlement); Gong-Chun v. Aetna Inc., 2012 WL 2872788, *16 (E.D. Cal. 2012) (settlement approved when less than two percent of the class members opted out and no objections were received); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *4 (S.D. Cal. 2009)

(finding this factor weighed in favor of approval of settlement when there were only 56 opt-outs out of the 2,385 class members and there were no objections).

D. Whether there are Signs of Collusion.

"When, as here, the settlement was negotiated before the district court certified the class, there is an even greater potential for a breach of fiduciary duty by class counsel, so [the Ninth Circuit] require[s] the district court to undertake an additional search for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." In re Volkswagen "Clean Diesel" Mktg. Litig., 895 F.3d 597, 610-11 (9th Cir. 2018) (internal quotation marks omitted). In granting preliminary approval, the court carefully scrutinized the settlement and determined that it was the product of arms-length negotiations, (see Dkt. 141, PAO at 14-15), and that there was "no evidence that the settlement [was] 'the product of fraud or overreaching by, or collusion between, the negotiating parties[.]'" (Id. at 15) (quoting Rodriguez, 563 F.3d at 965).

Little has changed since preliminary approval to raise any red flags or "subtle signs" of collusion. No funds will revert to defendant, (see Dkt. 130-1, Exh. A, Settlement Agreement at ¶¶ 21-23; Dkt. 145, Motion at 5), and there is no clear sailing provision. (See id. at § 33). In short, the court finds that the settlement is fair, reasonable, and adequate, and not the product of collusion.

II. ATTORNEY'S FEES, COSTS AND SERVICE AWARDS.

The Settlement Agreement provides that class counsel will "seek attorney's fee[s] and costs of no more than the amount specified in the proposed Class Certification and Preliminary Approval order[, and that] Defendants take no position on the amount of the fees and costs . . . sought by counsel." (Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 33).

A. Attorney's Fees.

Rule 23(h) provides that, "[i]n a certified class action, the court may award reasonable

attorney's fees . . . that are authorized by law or by the parties' agreement."[11] Fed. R. Civ. P. 23(h). Attorney's fees in class actions are determined "using either the lodestar method or the percentage-of-recovery method." In re Hyundai, 926 F.3d at 570. The court's discretion in choosing between these two methods "must be exercised so as to achieve a reasonable result." Bluetooth, 654 F.3d at 942; see id. (In class actions where a "settlement produces a common fund . . . courts have discretion to employ either the lodestar method or the percentage-of-recovery method."); In re Hyundai, 926 F.3d at 570. The lodestar method is typically utilized when the relief obtained is "not easily monetized," such as when injunctive relief is part of the settlement. See Bluetooth, 654 F.3d at 941. The percentage-of-recovery method is typically used when a common fund is created. See id. at 942.

Under the lodestar method, the court multiplies the number of reasonable hours expended by a reasonable hourly rate. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998); In re Hyundai, 926 F.3d at 570. Once the lodestar has been determined, the "figure may be adjusted upward or downward to account for several factors including the quality of the representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." Hanlon, 150 F.3d at 1029; In re Hyundai, 926 F.3d at 570 (same). However, "adjustments [to the lodestar calculation] are the exception rather than the rule." Fischel v. Equitable Life Assurance Society of U.S., 307 F.3d 997, 1007 (9th Cir. 2002) (internal quotation marks omitted); Johnson v. MGM Holdings, Inc., 794 F.Appx. 584, 586 (9th Cir. 2019). Indeed, adjustment of the lodestar is warranted only in "rare and exceptional cases[.]" Bluetooth, 654 F.3d at 942 n. 7 (internal quotation marks omitted).

Under the "percentage-of-the-fund" or "percentage-of-recovery" method, the "court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee." Hanlon, 150 F.3d at 1029; In re Hyundai, 926 F.3d at 570 (same). The Ninth

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[11] Although the operative complaint asserts both federal and state claims, (see Dkt. 26, TAC), the court will exercise its discretion and apply federal law to the award of attorney's fees. See, e.g., Hoffman v. Constr. Prot. Servs., Inc., 2006 WL 6105638, *3 (C.D. Cal. 2006) ("Where the Complaint invokes both state and federal law, the method of calculating attorney's fees rests in the Court's discretion.").

Circuit "has established 25% of the common fund as a benchmark[,]" Hanlon, 150 F.3d at 1029, "for a reasonable fee award[.]" Bluetooth, 654 F.3d at 942; In re Hyundai, 926 F.3d at 570-71 (recognizing the 25% benchmark and noting that the percentage of the fund is "a rough approximation of a reasonable fee").

The 25% benchmark "can be adjusted upward or downward, depending on the circumstances." In re Hyundai, 926 F.3d at 570; Bluetooth, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record for any 'special circumstances' justifying a departure."); Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990) ("The benchmark percentage should be adjusted, or replaced by a lodestar calculation, 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."). In determining whether to depart from the 25% benchmark, courts consider "all of the circumstances of the case[,]" including: (1) the results achieved for the class; (2) the risk of litigation; (3) the skill required and quality of work; (4) the contingent nature of the fee; and (5) awards made in similar cases. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048-50 (9th Cir. 2002); Viceral v. Mistras Grp., Inc., 2017 WL 661352, *3 (N.D. Cal. 2017) (utilizing similar factors); In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 955 (9th Cir. 2015) (explaining that "there are no doubt many factors that a court could apply in assessing an attorneys' fees award" and that "Vizcaino does not purport to establish an exhaustive list"). Under the circumstances of this case, the court finds that counsel's request for an award of $391,243.75 in attorney's fees, which amounts to 23% of the common fund, is reasonable.[12] See In re Hyundai, 926 F.3d at 570-71 (recognizing the 25% benchmark and noting

[12] However, plaintiffs' counsel has been less than precise regarding the calculation of attorney's fees and costs. The Settlement Agreement provides that class counsel will "seek attorney's fee[s] and costs of no more than the amount specified in the proposed Class Certification and Preliminary Approval order[.]" (See Dkt. 130-1, Exh. A, Settlement Agreement at ¶ 33). The attorney's fees and costs in the proposed Class Certification and Preliminary Approval order was not to exceed $385,000. (See Dkt. 130-3, Proposed Order at ¶ 13). Consistent with that, plaintiffs in their preliminary approval motion indicated that counsel would be seeking $385,000 in attorney's fees and costs. (See Dkt. 130, Motion for Preliminary Approval

that the percentage of the fund is "a rough approximation of a reasonable fee").

B. Costs.

Class counsel seek $25,460.43 in costs, which includes the amount payable to JND. (See Dkt. 142, Fees Motion at 8, 15; Dkt. 145, Motion at 4). The court finds that the costs incurred by class counsel over the course of this litigation are reasonable, and therefore awards a total of $25,460.43 in costs, which includes the payment to JND for its services.

C. Class Representative Service Awards.

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." Staton, 327 F.3d at 977; see Wren v. RGIS Inventory Specialists, 2011 WL 1230826, *31 (N.D. Cal. 2011) ("It is well-established in this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments, also known as service awards."). Here, plaintiffs request that the court grant a service award in the amount of $1,500 to each class representative. (See Dkt. 142, Fees Motion at 8, 15-16). Such incentive awards are presumptively reasonable, see Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 335 (N.D. Cal. 2014) (finding an incentive award of $5,000 presumptively reasonable), and the court finds that it does not create a conflict of interest between plaintiffs and class members. See, e.g., In re Online DVD-Rental, 779 F.3d at 947-48 (upholding reasonableness of $5,000 incentive awards that were roughly 417 times larger than $12 individual awards because the number of representatives was relatively small, and the total amount of incentive awards "ma[de] up a mere

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at 15; Dkt. 141, PAO at 3). However, in the Fees Motion, plaintiffs' counsel seeks $385,000 in attorney's fees, plus an additional $8,402 in litigation costs (excluding administration costs). (See Dkt. 142, Fees Motion 8). Then, to confuse the issue further, in the later-filed Motion, plaintiffs' counsel requested $391,244 in attorney's fees and $25,460 in litigation costs and class administration expenses. (See Dkt. 145, Motion at 4). According to plaintiffs' counsel, the increase in attorney's fees is to compensate counsel for additional fees incurred since the filing of the Fees Motion, including time "devoted to responding to class members who contacted [his] office, and in preparing the motion for final approval." (See Dkt. 145, Cook Decl. at ¶ 5). Despite plaintiffs' counsel's modifications of the amount requested, the modifications are justified and, even with the additional amounts, the total attorney's fees amount is still less than the 25 percent benchmark.

.17% of the total settlement fund").[13]

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiffs' Motion for Final Approval of Class Certification and Settlement; Award of Supplemental Attorneys' Fees **(Document No. 145)** is **granted** as set forth herein.

2. The court hereby **grants final approval** of the parties' Corrected Revised Settlement Agreement ("Settlement Agreement") (Document No. 130-1, Exh. A). The court finds that the Settlement Agreement is fair, adequate and reasonable, appears to be the product of arm's-length and informed negotiations, and treats all members of the class fairly. The parties are ordered to perform their obligations pursuant to the terms of the Settlement Agreement and this Order.

3. Plaintiffs' Motion for Approval of Class Representatives' Incentive Awards and Award of Attorneys' Fees and Costs **(Document No. 142)** is **granted** as set forth herein.

4. The settlement class is certified under Federal Rule of Civil Procedure 23(c) as defined in ¶ 2 of the Settlement Agreement.

5. The form, manner, and content of the Class Notice meets the requirements of Federal Rules of Civil Procedure 23(c)(2).

6. Plaintiffs Leonardo Gonzalez-Tzita, Esteban Diego Esteban, and Sidonio Lomeli shall each be paid a service payment of $1,500 in accordance with the terms of the Settlement Agreement and this Order. Plaintiff Lomeli shall additionally be compensated for his individual false arrest and malicious prosecution claims as set forth in the Settement Agreement and the Preliminary Approval Order.

7. Class counsel shall be paid $391,243.75 in attorney's fees, and $25,460.43 in costs in accordance with the terms of the Settlement Agreement and this Order.

8. The Claims Administrator, JND, shall be paid for its fees and expenses in accordance

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[13] Plaintiffs request that the court approve the settlement provision providing $30,000 to Lomeli to settle his individual false arrest and malicious prosecution claims. (See Dkt. 145, Motion at 5). In its order granting preliminary approval, the court analyzed this settlement provision and determined that it did not create a conflict of interest. (See Dkt. 18, PAO at 18; see also id. at 9-10). Nothing has changed that undermines the court's conclusion.

with the terms of the Settlement Agreement and this Order. Such fees and expenses shall be paid from the costs awarded to plaintiffs' counsel.

9. All class members who did not validly and timely request exclusion from the settlement have released their claims, as set forth in the Settlement Agreement, against any of the released parties (as defined in the Settlement Agreement).

10. Except as to any class members who have validly and timely requested exclusion, this action is **dismissed with prejudice**, with all parties to bear their own fees and costs except as set forth herein and in the prior orders of the court.

11. Without affecting the finality of this Order in any way, the court hereby retains jurisdiction over the parties, including class members, for the purpose of construing, enforcing, and administering the Order and Judgment, as well as the Settlement Agreement itself.

12. Judgment shall be entered accordingly.

Dated this 25th day of August, 2020.

/s/
Fernando M. Olguin
United States District Judge