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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TRACY DAWN TRAUTH, et al., Plaintiffs, v. SPEARMINT RHINO COMPANIES WORLDWIDE, INC., et al. Defendants.	Case No. EDCV 09-01316-VAP (DTBx) **ORDER GRANTING PLAINTIFFS' RENEWED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT (DOC. NO. 317) AND GRANTING IN PART PLAINTIFFS' RENEWED MOTION FOR ATTORNEYS' FEES (DOC. NO. 311)**

Plaintiffs' Renewed Motions for Final Approval of Class Action Settlement (Doc. No. 317) and for Attorneys' Fees and Incentive Awards (Doc. No. 311) came before the Court for hearing on August 30, 2012. For the reasons to follow, the Court GRANTS the Motion for Final Approval and GRANTS the Motion for Attorneys' Fees IN PART.

I. BACKGROUND

The Court has discussed the factual and procedural history of this matter at length, most recently in its June 21, 2012, Minute Order ("June 21 Order") (Doc. No. 305), in which it denied Plaintiffs' last attempt to procure the Court's approval of the proposed settlement of this class action. The Court therefore offers only the barest recitation of the facts necessary to place the current Motions in context.

Plaintiffs Tracy Dawn Trauth, Christeen Rivera, Jennifer Blair, Victoria Omlor, Jasmine Wright, Anicia Vintimilla, Marsha Ellington, Selena Denise Pelaez, Nicole Garcia, Reah Navarro, Tami Sanchez, Rose Shakespeare, Ashley Malott King, and Connie Linne, as representatives of a nationwide class of "exotic dancers" (collectively, "Dancers"), are moving to settle a three-year old class action against Defendants, the operators of a group of "adult entertainment" venues ("Clubs"). The Dancers charge that the Clubs classify Dancers improperly as independent contractors, thereby depriving them of benefits that employees are guaranteed under federal law (i.e., the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, et seq.) and various states' laws.

The Dancers and Clubs entered into a Settlement Agreement ("Agreement") (Ex. A to Decl. of Hart

Robinovitch ("Robinovitch Decl.") (Doc. No. 318-1)), the relevant provisions of which are as follows:

- Within six months, the Clubs will no longer treat Dancers as independent contractors or lessees; instead the Clubs will treat Dancers "as either employees or owners (e.g. shareholder, limited partner, partner, member or other type of ownership stake)" of any Clubs in existence at the time of settlement. (Doc. No. 318-1 ¶ 4.2.) In California, Dancers will no longer be charged stage fees (i.e., fees a Dancer pays for the privilege of performing at a Club). (Id. ¶ 4.1.)

- After deducting from the agreed-upon $12,970,000 gross settlement amount the cost of administering the settlement (see id. ¶ 5.4), incentive payments for class representatives (see id. ¶ 5.6.1), and any attorneys' fees awarded to class counsel (see id. ¶ 5.5.2), 50.14 percent of the remaining settlement amount is allocated to California Dancers; 42.69 percent to Nevada Dancers, and 7.16 percent to Kentucky, Idaho, Texas, Nevada, and Florida Dancers (see id. ¶ 5.7.2).

- Dancers' claims will be paid on a claims-made basis; i.e., a Dancer who does not submit a written claim

against the settlement fund will not be paid, even though she may still be bound by the settlement. (See id. ¶ 5.7.1) If the entire settlement is not claimed, the remainder reverts to the Clubs – with the exception of a non-reversionary amount of $2,723,700. (See id. ¶ 5.8.)

- Any portion of the non-reversionary amount remaining after payment of Dancers' claims will be first used towards incentive payments for most of the class representatives (see id. ¶¶ 5.6.1, 5.6.2); if there is still any portion of the non-reversionary amount remaining, ten percent of that amount will be distributed on a pro rata basis to Dancers who submitted claims against the settlement fund, and the rest "shall be distributed over a five year period" to the Los Angeles County Bar Association Foundation – Domestic Violence Project, Foundation for an Independent Tomorrow, Women at Work – Job Resource Center, and the National Association of Working Women (see id. ¶ 5.8).

- The Clubs will not oppose the payment of incentive awards to class representatives of up to $15,000 for Tracy Dawn Trauth and up to $6,250 each for Jennifer Blair, Christeen Rivera, Victoria Omlor, Jasmine Wright, Anicia Vintimilla, Marsha Ellington, Selena

Denise Pelaez, Nicole Garcia, Reah Navarro, and Tami Sanchez. (Id. ¶ 5.6.1.) They also agree not to oppose awards of up to $1,000 each for Rose Shakespeare, Connie Linne, and Ashley Malott King; those awards, however, will not be paid from the $12,970,000 settlement fund. (Id. ¶ 5.6.2.)

- Any Dancer who does not file a timely request to opt out of the class – whether or not she submitted a claim to settlement funds – will, by effect of the Agreement, be deemed to have released the Clubs "from any and all claims, liabilities, demands, causes of action, or lawsuits, known or unknown . . . whether legal, statutory, equitable or of any other type of form, whether under federal law (excluding any and all claims arising under the FLSA . . .) or state law . . . that in any way relate to or arise out of or in connection with acts, omissions, facts, statements, matters, transactions, or occurrences that have been or could have been alleged in [this action], including but not limited to overtime, minimum wages, missed or inadequate meal periods and rest breaks, unpaid tip income, reimbursement for uniform costs, itemized wage statement violations, record keeping violations, and waiting time penalties . . . ." (See, e.g., id. ¶ 7.1.)

- Any Dancer who does file a timely claim, however, will be deemed to have opted-in to an FLSA collective action, and will release any FLSA claim against the Clubs, as well any of the state law claims discussed above. (See id. ¶ 7.7.)

- The Clubs agree not to oppose an award of attorneys' fees, as long as the award is no greater than $2,500,000, to be deducted from the gross settlement amount of $12,970,000. (See id. ¶¶ 5.5.1, 5.5.2.)

The Court considers the Dancers' Motion for Final Approval, which would have the effect of settling both their FLSA and state law claims, under the following legal standards.

II. LEGAL STANDARD

At the preliminary approval stage, the Court considered whether the proposed settlement "(1) appear[ed] to be the product of serious, informed, non-collusive negotiations; (2) ha[d] no obvious deficiencies; (3) d[id] not improperly grant preferential treatment to class representatives or segments of the class; and (4) f[ell] within the range of possible approval," Harris v. Vector Mktg. Corp., No. C-08-5198 EMC, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011) ("Harris II") – all through the lens of the same criteria

the Court applies now to determine whether the proposed settlement should be approved finally. The difference, however, is the "[c]loser scrutiny," id., with which the Court now considers the following factors.

A. Settling a Class Action Certified Under Federal Rule of Civil Procedure 23

Under Federal Rule of Civil Procedure 23, certifying a class for the sole purpose of settling a class action is a two-step process, requiring a court 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). First, the proposed class must meet the familiar criteria for certification outlined in Federal Rules of Civil Procedure 23(a) and (b) – e.g., numerosity of claimants in the proposed class (Rule 23(a)(1)), commonality of the questions of law and fact among them (Rule 23(a)(2)), typicality of the claims they present (Rule 23(a)(3)), and adequacy of their representation before the court (Rule 23(a)(4)) – that would apply in the absence of a settlement agreement. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 619-22 (1997); see Narouz v. Charter Commc'ns, LLC, 591 F.3d 1261, 1266 (9th Cir. 2010) (noting that "[t]o obtain class certification" for settlement purposes, "a class plaintiff has the burden of showing that the requirements of Rule 23(a) are met and that the class is maintainable pursuant to Rule 23(b)");

see Fed. R. Civ. P. 23(a). Indeed, a court must pay "undiluted, even heightened, attention" to Rule 23's requirements when certifying a case for settlement, because the court "will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." Amchem Prods., Inc., 521 U.S. at 620.

In this case, the Dancers seek class certification pursuant to Rule 23(b)(3). Thus, in addition to finding the proposed class meets Rule 23(a)'s numerosity, typicality, commonality, and adequacy requirements, a court must find either "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," Fed. R. Civ. P. 23(b)(3). In making the requisite findings under Rule 23(b)(3), the court considers "the class members' interest in individually controlling the prosecution or defense of separate actions," Fed. R. Civ. P. 23(b)(3)(A), "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), and "the desirability or undesirability of concentrating the

litigation of the claims in the particular forum," Fed. R. Civ. P. 23(b)(3)(C).[1]

If a settlement class meets Rule 23's criteria and the court approves preliminarily of the settlement of the case, the court turns to the second step: it must hold a hearing to determine whether to finalize the settlement, thereby binding the entire class. Fed. R. Civ. P. 23(e)(2). In carrying out its charge to determine whether a settlement proposal is "fair, reasonable, and adequate," id., the court considers a variety of factors, including at least the following:

> (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 state 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.

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[1] The inquiry made traditionally under Federal Rule of Civil Procedure 23(b)(3)(D), i.e., whether trying the case as a class action "would present intractable management problems," is unnecessary when a class is certified solely for the purpose of settlement. Amchem Prods., Inc., 521 U.S. at 620.

In re Bluetooth Headset Prods. Liab. 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)).

The Manual for Complex Litigation suggests further inquiries for a court reviewing a proposed settlement, including: asking "whether class or subclass members have the right to request exclusion from the settlement, and, if so, the number exercising that right"; inquiring about "the fairness and reasonableness of the procedure for processing individual claims under the settlement"; and evaluating whether "the named plaintiffs are the only class members to receive monetary relief or are to receive monetary relief that is disproportionately large." Manual for Complex Litigation (Fourth) § 21.62. (2004).

B. Settling an FLSA Collective Action

Settling a Rule 23 class action requires the existence of a class; settling an FLSA collective action first requires the existence of an FLSA collective action.[2] The FLSA authorizes "any one or more employees for and in behalf of himself or themselves and other employees similarly situated" to sue an employer for

[2] The action prescribed by the FLSA is known commonly as a collective, rather than a class, action. Sarviss v. Gen. Dynamics Info. Tech. Inc., 663 F. Supp. 2d 883, 902 (C.D. Cal. 2009).

unpaid minimum wages or unpaid overtime compensation, provided that "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b). In other words, in an FLSA collective action "each plaintiff must opt into the suit," rather than out of it (as in a Rule 23 class action). McElmurry v. U.S. Bank Nat'l Ass'n, 495 F.3d 1136, 1139 (9th Cir. 2007) (emphasis in original).

Plaintiffs in a collective action must be "similarly situated"; the meaning of that phrase, however, remains undefined in the Ninth Circuit. Mitchell v. Acosta Sales, LLC, 841 F. Supp. 2d 1105, 1115 (C.D. Cal. 2011). The typical approach of courts in the Central District of California is to require the plaintiff who proposes a collective action to meet the light burden of showing not that she and her proposed class are identically positioned, just similarly so – a test that reduces typically to requiring the plaintiff to substantiate with affidavits her "allegations that the putative class members were together the victims of a single decision, policy, or plan." Id. (quoting Sarviss v. Gen. Dynamics Info. Tech. Inc., 663 F. Supp. 2d 883, 903 (C.D. Cal. 2009) (internal quotation omitted)).

Before a putative collective action is tried, however, a court may – though it need not, absent argument that the employees are not situated similarly – take a second, more rigorous look at the class, enquiring as to "'(1) the disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to the defendants with respect to the individual plaintiffs; and (3) fairness and procedural considerations.'" Mitchell, 841 F. Supp. 2d at 1116 (quoting Edwards v. City of Long Beach, 467 F. Supp. 2d 986, 990 (C.D. Cal. 2006)); see Edwards, 467 F. Supp. 2d at 989-90 (noting that the FLSA contains no "certification" requirement or protocol to which courts must adhere; certification of a collective action is instead merely "an effective case management tool") (citing Hoffmann–La Roche Inc. v. Sperling, 493 U.S. 165, 170–72 (1989)).

Whatever role a court plays in certifying an FLSA class, it is not bound to exercise the same oversight of the settlement of a collective action as it must a class action under Federal Rule of Civil Procedure 23(e). Whereas the court's role in supervising the settlement of a class action "protects unnamed class members 'from unjust or unfair settlements affecting their rights,'" Amchem Prods., Inc., 521 U.S. at 623 (quoting 7B Charles Alan Wright, et al., Federal Practice & Procedure § 1797

(3d ed.)), members of an FLSA collective action have opted-in affirmatively; a court's involvement in the management of their action "has less to do with the due process rights" of those to be bound by a settlement, "and more to do with the named plaintiffs' interest in vigorously pursuing the litigation and the district court's interest in 'managing collective actions in an orderly fashion,'" McElmurry, 495 F.3d at 1139 (quoting Hoffmann–LaRoche Inc., 493 U.S. at 173).[3]

Having elaborated on the criteria it applies in analyzing the Dancers' Motion, the Court now turns to that task.

III. DISCUSSION

The Court denied the Dancers' previous motion for approval of settlement in this case for three discrete reasons. (See June 21 Order at 15-16.) First, the Dancers failed to satisfy Rule 23(a)'s typicality and adequacy requirements, because they offered no class representatives for the subclasses comprised of Dancers working at Clubs in Kentucky, Florida, Idaho, and Texas.

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[3] Moreover, it appears to be an open question whether and when members of an FLSA class who opt in may withdraw from the collective action, and what effects their prior participation has after their withdrawal. See Adams v. Sch. Bd. of Hanover Cnty., No. 3:05CV310, 2008 WL 5070454, at *17-*19 (E.D. Va. Nov. 26, 2008) (noting that "[n]o published case discusses the procedures a court must undertake when a party who had opted-in seeks to withdraw").

(See id. at 16-17.) Second, the cy pres provision in the Agreement's previous iteration defied the law of this circuit. (See id. at 18-19.) Third, the Agreement released the FLSA claims of even those class members who did not opt in to the FLSA collective action. (See id. at 21-23.) The Dancers have now rectified each of those flaws, and as the Court noted, "[t]he Agreement otherwise appears . . . to be fair, adequate, and reasonable."[4] (Id. at 19.)

Thus, for the reasons set forth in the June 21 Order, the Court finds that the Dancers satisfy Rule 23(a)'s numerosity and commonality requirements, and as they now have class representatives for each subclass, its typicality and adequacy requirements. The Court finds further that the Dancers' choice of charitable organizations to receive the otherwise unallocated portion of the settlement fund's non-reversionary amount satisfies the Ninth Circuit's requirements for cy pres awards. Finally, the language of the Agreement now makes clear that only those Dancers who file claims will be deemed to have opted in to an FLSA subclass, and thus

[4] Aside from the objections received before, and addressed in, the Court's June 21 Order, the Court has received an objection from a class member that states simply that the class member believes the settlement is unfair, with no further explanation. The Court has considered that objection, and determined that without elaboration, it is an insufficient basis to disapprove the settlement.

that only those Dancers will release their FLSA claims against the Clubs. Accordingly, the Court GRANTS the Dancers' Motion for Final Approval of Class Action Settlement, and turns to their Motion for Attorneys' Fees and Incentive Awards.

A. Attorneys' Fees

In addition to costs, the Dancers seek $2,500,000 in attorneys' fees for their counsel, either calculated as a percentage of the $12,970,000 gross settlement amount or using the lodestar method. The Court calculates the Dancers' attorneys' fees using the lodestar method, see Fischel v. Equitable Life Assurance Soc'y, 307 F.3d 997, 1006 (9th Cir. 2002) ("the district court has the discretion to apply either the lodestar method or the percentage-of-the-fund method in calculating a fee award"). The Court has conducted a line-item review of the billing records submitted in this case from each of the billing professionals.

To apply the lodestar method, the Court must "first calculat[e] the 'lodestar.'" Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028 (9th Cir. 2000) (citation omitted). The Court determines the 'lodestar' amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Id.; McGrath v. Cnty. of Nevada, 67 F.3d 248, 252 (9th Cir. 1995)

(citing Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). Next, the Court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), cert. denied, 425 U.S. 951 (1976), that have not been subsumed in the lodestar calculation.[5] Caudle, 224 F.3d at 1028-29.

In determining a reasonable number of hours, the Court must examine detailed time records to determine whether the hours claimed are adequately documented and whether any of them are unnecessary, duplicative, or excessive. Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986), reh'g denied, amended on other grounds, 808 F.2d 1373 (9th Cir. 1987) (citing Hensley, 461 U.S. at 433-34). To determine a reasonable rate for each attorney, the Court must look to the rate

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[5] Kerr was decided before the lodestar approach was adopted by the Supreme Court in Hensley, 461 U.S. at 433, as the starting point for determining reasonable fees. In Kerr, the Ninth Circuit adopted the 12-factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974); this analysis identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. Id. at 1210-11 (citing Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984)).

To the extent that the Kerr factors are not addressed in the calculation of the lodestar, they may be considered in determining whether the fee award should be adjusted upward or downward, once the lodestar has been calculated. Id. at 1212 (citing Hensley, 461 U.S. at 434). There is a strong presumption that the lodestar figure represents a reasonable fee. Jordan v. Multnomah Cnty., 815 F.2d 1258, 1262 (9th Cir. 1987) (citing Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986)).

The Dancers seek to adjust their lodestar upward using the multiplier method. A court may adjust the lodestar upward or downward using a multiplier. An upward adjustment of the lodestar is appropriate only in extraordinary cases, such as when the attorneys faced exceptional risks of not prevailing or not recovering any fees. Chalmers, 796 F.2d at 1212. See also Blum, 465 U.S. at 903 (Brennan, J., concurring); Hensley, 461 U.S. at 448 (Brennan, J., concurring in part, dissenting in part); Pennsylvania, 478 U.S. at 565 (upward adjustments are “proper only in certain ‘rare’ and ‘exceptional’

cases"). This case is not an extraordinary, rare, or exceptional case, and therefore, application of a multiplier to adjust the lodestar upward is inappropriate and unwarranted.

The party seeking attorneys' fees bears the burden of "submitting evidence supporting the hours worked and the rates claimed." Hensley, 461 U.S. at 433. A fee applicant can meet this basic requirement by listing the hours worked by each person at the firm and identifying the general subject matter of his or her time expenditures. See Fische v. SJB-P.D. Inc., 214 F.3d 1115, 1121 (9th Cir. 2000).

In addition to the voluminous materials the Dancers submitted to justify the $2,500,000 in attorneys' fees they seek, the Court considers the amount of time it took the parties to manage the logistics of settling this litigation. The Court notes that in the course of this case:

- Five days before the hearing on a Motion for Preliminary Approval (Doc. No. 119), the Dancers submitted to the Court a revised settlement agreement, and a declaration of counsel that it was substantially the same as the agreement the Court was already evaluating. Instead, the revised agreement

made various substantive changes to the agreement then before the Court, including in the relief to which the Dancers would be entitled and the amount of fees their attorneys would receive. (See June 21 Order at 7.)

- The Dancers then filed an Amended Motion for Preliminary Approval (Doc. No. 132), which "failed in many respects . . . to set forth the necessary elements for the Court to certify a settlement class." (See June 21 Order at 7.) The motion was denied.

- Next, the Dancers filed a Second Motion for Preliminary Approval (Doc. No. 159) that accompanied an agreement purporting to bind Clubs who were not parties to the litigation. (See June 21 Order at 8.) The Court therefore denied that motion, too.

- The Dancers filed their first Motion for Final Approval of Class Action Settlement (Doc. No. 244) slightly over a year ago; however, after realizing a number of Dancers had been excluded inadvertently from the parties' calculations in reaching their settlement, the Dancers and Clubs returned to the drawing board. (See June 21 Order at 9.)

- The Dancers submitted a new settlement agreement, for which they sought the Court's approval. (See Doc. No. 265.) Again, there were deficiencies in the Motion, which the Court therefore denied. (See Doc. No. 268; see generally June 21 Order at 9.)

- The Dancers filed a "Third Amended Motion for Final Approval of Class Action Settlement" (Doc. No. 288); the Court denied that for the reasons set forth at the beginning of Section III of this Order. (See also June 21 Order at 9, 15-16.)

The Court therefore considers the bills submitted by the Dancers' counsel against this background. Plaintiffs' counsel argued at the August 30 hearing of this Motion that most of the false steps in the course of this litigation were the result of the defense's mistakes or oversights, a contention that appears well-taken as to some of the history of the resubmission of the motions for settlement agreement approval.

After careful review of the billing records, the Court concludes that plaintiffs' request for fees incurred is reasonable, after deductions for certain amounts as described below. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983) ("The most useful starting point for determining the amount of a reasonable fee is the number

of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.") Plaintiffs have represented that the fees charged by plaintiff's counsel are "more than reasonable when compared to the billing rates for persons with similar experience and background in the Southern California marketplace." (Robinovitch Decl. at ¶ 35; see also Declaration of Christopher P. Ridout ("Ridout Decl.") at ¶ 20 ("rates charges . . . are reasonable and within the range of rates awarded to attorneys practicing within the Central District of California"); Declaration of Caleb Marker ("Marker Decl.") at ¶ 36.) Based on the Court's familiarity with the rates charged by other firms in the Southern California legal community, the hourly rates of between $475-700 for partners (See Robinovitch Decl. at ¶ 26-27; Ridout Decl. at ¶ 11; Declaration of Stephen M. Harris at ¶ 8); $350 for of counsel (See Marker Decl. at ¶ 23); $250-495 for other attorneys (See Ex. B to Robinovitch Decl.); and $150 for law clerk and paralegal fees (Ridout Decl. at ¶ 11; Robinovitch Decl. at ¶ 28) are reasonable. Plaintiffs also represent that the hours spent on the litigation were reasonable. (Robinovitch Decl. at ¶ 30; Ridout Decl. at ¶ 10; Marker Decl. at ¶ 21.) In addition, after reviewing the costs requested by plaintiffs, the Court concludes that they were reasonably incurred in prosecuting the case.

After reviewing each billing entry, the Court finds it necessary and appropriate to reduce the fees requested by the Dancers for (1) time spent on irrelevant issues or tasks upon which excessive time was spent or billed, e.g., preparation of pro hac vice applications, (2) other unnecessary, excessive, or duplicative entries, and (3) time charged for clerical or secretarial tasks. For example, several of the billing attorneys billed time for analyzing the Court's notices regarding their own filing deficiencies. The bills submitted from at least two of the Dancers' attorneys also contain repeated billings for excessive time spent for reviewing minute orders from the Court that stated nothing more than a hearing was conducted, and the matter taken under submission. The Court finds it indefensible that an attorney who had attended the hearing would then charge for 24 minutes of his time to review the clerk's two or three sentence minute order, or even six minutes to do so.

Several attorneys engaged regularly in the practice of splitting among many billing entries activities that should be consolidated in one. For example, on January 26, 2010, Mr. Ridout appears to have engaged in a correspondence with Mr. Garrell, to which he devoted seven separate line items, each one taking one-tenth or two-tenths of an hour. It thus appears that each message in the correspondence warranted its own line item.

Presumably Mr. Ridout rounds up from zero minutes to six minutes (one-tenth of an hour) each time he undertakes a task. Thus, if Mr. Ridout takes one minute to read a message from Mr. Garrell, then takes three minutes to read a subsequent message, rather than billing for six minutes (four minutes rounded up to the nearest tenth of an hour), he bills for 12 minutes (one minute rounded up to the nearest tenth of an hour plus three minutes rounded up to the nearest tenth of an hour). These are but a few examples of the type of billing for which the Court has deducted time when it reviewed the fees sought in this case.

The amount of fees and costs requested, as well as the reduction in fees, is listed below.

Rideout and Lyons, LLP (not including Caleb Marker)

- Amount of Fees Requested: $591,465.00
    - Deductions: $40,095.00
    - Balance: $551,370.00
- Amount of Costs Requested: $5,687.30

Ridout and Lyons, LLP (Caleb Marker only)

- Amount of Fees Requested: $622,072.50
    - Deductions: $78,480.00
    - Balance: $543,592.50
- Amount of Costs Requested: $5,668.76

Zimmerman Reed, PLLP

- Amount of Fees Requested: $729,642.50
    - Deductions: $26,425.00
    - Balance: $703,217.50
- Amount of Costs Requested: $35,287.88

Knapp, Petersen & Clarke

- Amount Requested: $484,987.00
    - Deductions: $53,697.50
    - Balance: $431,289.50
- Amount of Costs Requested: $23,441.83

The Law Offices of Robert L. Starr

- Amount Requested: $88,935.00
    - Deductions: $17,380
    - Balance: $71,555.00
- Amount of Costs Requested: $3,185.00

B. Incentive Awards

Given the time they invested in this matter, and the professional and personal risk to which being named plaintiffs subjected them, the Dancers also seek incentive awards for their class representatives as follows:

- For Tracy Dawn Trauth, $15,000 for "over 163.5 hours" of "time for the benefit of the [Dancers]." (See Decl. of Tracy Dawn Trauth (Doc. No. 314-4) ¶ 27.)

- For Jennifer Blair, $6,250 for 30 hours of time spent aiding in the litigation of this matter. (See Decl. of Jennifer Blair (Doc. No. 314-6) ¶ 19.)

- For Christeen Rivera, $6,250 for 60 hours of time spent aiding in the litigation of this matter. (See Decl. of Christeen Rivera (Doc. No. 314-5) ¶ 35.)

- For Victoria Omlor, $6,250 for 35 hours of time spent in connection with this litigation. (See Decl. of Victoria Omlor (Doc. No. 314-9) ¶ 20.)

- For Jasmine Wright, $6,250 for 40 hours of time spent aiding in the litigation of this matter. (See Decl. of Jasmine Wright (Doc. No. 314-14) ¶ 31.)

- For Anicia Vintimilla, $6,250 for 35 hours spent aiding in the litigation of this matter. (See Decl. of Anicia Vintimilla (Doc. No. 314-13) ¶ 20.)

- For Marsha Ellington, $6,250 for 25 hours spent aiding in the litigation of this matter. (See Decl. of Marsha Ellington (Doc. No. 314-8) ¶ 20.)

- For Selena Denise Pelaez, $6,250 for 25 hours spent aiding in the litigation of this matter. (See Decl. of Selena Denise Pelaez (Doc. No. 314-10) ¶ 20.)

- For Nicole Garcia, $6,250 for 20 hours spent aiding in the litigation of this matter. (See Decl. of Nicole Garcia (Doc. No. 314-7) ¶ 20.)

- For Reah Navarro, $6,250 for 20 hours spent aiding in the litigation of this matter. (See Decl. of Reah Navarro (Doc. No. 314-12) ¶ 20.)

- For Tami Sanchez, $6,250 for 20 hours spent aiding in the litigation of this matter. (See Decl. of Tami Sanchez (Doc. No. 314-11) ¶ 20.)

- For Rose Shakespeare, $1,000 for 15 hours spent aiding in the litigation of this matter. (See Decl. of Rose Shakespeare (Doc. No. 314-15) ¶ 29.)

- For Connie Linne, $1,000 for 15 hours spent aiding in the litigation of this matter. (See Decl. of Connie Linne (Doc. No. 314-16) ¶ 29.)

- For Ashley Malott King, $1,000 for 15 hours spent aiding in the litigation of this matter. (See Decl. of Ashley Malott King (Doc. No. 314-17) ¶ 29.)

In determining whether and how much to award class representatives in incentive payments, courts are to consider the representatives' actions in protecting the interests of the class, the degree to which those actions benefitted the class, the amount of time and effort the representatives spent pursuing the litigation, and the representatives' reasonable fear of being retaliated against for their visible participation. Staton, 327 F.3d at 977 (citing Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998)). Courts also consider the number of representatives being awarded incentive payments, the proportion of the payments to the settlement amount, and the size of each payment. Staton, 327 F.3d at 977.

Here, the Court observes that while the total amount of the proposed incentive payments is a small fraction of the total settlement amount, awarding some of the proposed payments would mean giving the named representatives as much as $312.50 per hour for their time on the basis of boilerplate declarations. Moreover, there is scant evidence that any representative faced a real risk of retaliation; as to the one representative who claimed to have been retaliated against, the Clubs

offered a declaration indicating that she was banned from their premises because she appeared there while not working and disrupted the workplace activities of others to carry on social conversations. (See Omlor Decl. ¶ 13; but see Decl. of Kathy Vercher (Doc. No. 325-1) ¶ 2.) Accordingly, the Court will allow incentive payments as follows:

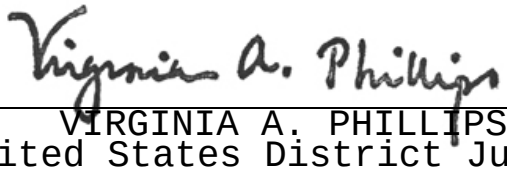
- Tracy Dawn Trauth: $10,000
- Jennifer Blair: $5,000
- Christeen Rivera: $5,000
- Victoria Omlor: $5,000
- Jasmine Wright: $5,000
- Anicia Vintimilla: $5,000
- Marsha Ellington: $2,500
- Selena Denise Pelaez: $2,500
- Nicole Garcia: $2,500
- Reah Navarro: $2,500

- Tami Sanchez: $2,500
- Rose Shakespeare: $1,000
- Connie Linne: $1,000
- Ashley Malott King: $1,000

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Dancers' Motion for Final Approval of Class Action Settlement and their Motion for Attorneys' Fees and Incentive Awards. The Dancers are hereby awarded $2,301,024.50 in fees, $73,270.77 in costs, and incentive payments as enumerated in the preceding section.

Dated: October 5, 2012



VIRGINIA A. PHILLIPS
United States District Judge