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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CATHY SYPHERD, et al.,  
Plaintiffs,  
v.  
LAZY DOG RESTAURANTS, LLC,  
Defendant.

Case No. 5:20-cv-00921-FLA (KKx)

**ORDER GRANTING MOTION FOR  
FINAL APPROVAL OF  
COLLECTIVE AND CLASS ACTION  
SETTLEMENT (DKT. 227) AND  
GRANTING PLAINTIFFS’ MOTION  
FOR ATTORNEYS’ FEES (DKT. 222)**

Date: February 10, 2023  
Time: 1:30 p.m.  
Courtroom: 6B

**RULING**

Before the court is Plaintiffs’ Unopposed Motion for Final Approval of Collective and Class Action Settlement (“Motion for Final Approval,” Dkt. 227) and Plaintiffs’ Motion for Attorneys’ Fees, Costs and Expenses, and Class Representative Incentive Awards (“Motion for Attorneys’ Fees,” Dkt. 222). Defendant Lazy Dog Restaurants, LLC (“Defendant” or “Lazy Dog”) does not oppose the Motion for Final Approval or the Motion for Attorneys’ Fees.

1 The court held a final approval hearing on February 10, 2023. Upon  
2 consideration of the papers filed in support of the motions, as well as oral argument,  
3 the court GRANTS the Motion for Final Approval and GRANTS the Motion for  
4 Attorneys’ Fees.

5 **BACKGROUND**

6 On May 1, 2020, Named Plaintiffs Cathy Sypherd, Patricia Brummett, and  
7 Kimberly Watt (collectively, “Named Plaintiffs”) brought the instant action against  
8 Defendant Lazy Dog, a national restaurant chain, on behalf of themselves and other  
9 similarly situated job applicants, asserting claims for age discrimination under  
10 California’s Fair Employment and Housing Act (“FEHA”) and the Age  
11 Discrimination in Employment Act of 1967 (“ADEA”). Dkt. 1 (“Compl.”); Dkt. 13  
12 (“FAC”). Named Plaintiffs allege Defendant engaged in discriminatory hiring  
13 practices against individuals 40 years of age or older for nonmanagerial front of the  
14 house positions, including hosts and hostesses, servers, and bartenders, in violation of  
15 FEHA and ADEA (“Covered Positions”).<sup>1</sup> FAC ¶¶ 1-2. Defendant disputes and  
16 denies Named Plaintiffs’ claims and contends it has complied fully with all applicable  
17 laws at issue in this matter. Dkt. 23.

18 On October 1, 2021, the parties filed notice they had reached a tentative  
19 settlement of Plaintiffs’ claims. Dkt. 210. On November 19, 2021, Named Plaintiffs  
20 filed an unopposed motion for preliminary approval of the settlement of this putative  
21 class action and collective action. Dkt. 212. On August 29, 2022, the court granted  
22 the motion and preliminarily approved the settlement and certified the California  
23 Class under Federal Rule of Civil Procedure 23 (“Rule 23”), and the nationwide  
24 Settlement Collective pursuant to 29 U.S.C. § 216. Dkt. 220.

25 \_\_\_\_\_  
26 <sup>1</sup> The Settlement defines the term “Covered Position” to mean “non-managerial front  
27 of the house positions, including hosts, servers, bartenders, bussers, runners, and take-  
28 out.” Dkt. 227-2 (Declaration of Jeffrey Hogue (“Hogue Decl.”), Ex. 1  
 (“Settlement”)) ¶ 1.11.

1 On November 9, 2022, Plaintiffs filed the unopposed Motion for Attorneys’  
2 Fees. Dkt. 222 (“MFA”). On January 13, 2023, Plaintiffs filed the unopposed Motion  
3 for Final Approval. Dkt. 227 (“Mot.”).

4 **SETTLEMENT TERMS**

5 **I. Proposed Class**

6 The “California Class” is defined as: all applicants who, between December 4,  
7 2015 to March 17, 2022, (a) applied for and were denied a Covered Position in  
8 California, or (b) resided in California at the time they applied to a Covered Position  
9 and were denied; and were aged 40 or older at the time of application. Settlement ¶¶  
10 1.10, 1.3.

11 The “Settlement Collective” is defined as: all applicants (a) who applied to  
12 Lazy Dog and were denied Covered Positions between December 4, 2016 to March  
13 17, 2022, (b) who were aged 40 or older at the time of application, and (c) who  
14 opt(ed) into this litigation pursuant to the federal ADEA, as amended, 29 U.S.C. §§  
15 621, *et seq.* on or before October 8, 2021. *Id.* ¶¶ 1.10, 1.34.

16 **II. Payment Terms**

17 In full settlement of the claims asserted in this lawsuit, Defendant agrees to pay  
18 a total gross fund of \$2,150,000 (“Gross Fund”). Dkt. 227-1 (“Mot. Br.”) at 5;  
19 Settlement ¶ 3.1.

20 The Gross Fund covers: (1) payments to the California Class  
21 and Settlement Collective, including all applicable taxes; (2) service awards of  
22 \$10,000 for each of the three Named Plaintiffs; (3) Class Counsel’s fees up to thirty  
23 percent (30%) of the common fund and actual litigation costs and expenses up to  
24 \$175,000; (4) settlement administration costs of \$24,000; and (5) a \$55,000 reserve  
25 fund to compensate participating members for any alleged and valid age  
26 discrimination claims based on Lazy Dog’s failure to hire them into a Covered  
27 Position to which they apply during the 15-month window following this court’s order  
28 granting final approval. Settlement ¶¶ 1.19, 3.1-3.2, 4.1, 5.1, 9.1.

1 During the notice period, which ended on December 2, 2022, approximately  
2 twenty percent of the class (20%) filed valid claims (715 out of 3,639). Dkt. 227-3,  
3 Declaration of Jeremy Talavera (“Talavera Decl.”) ¶ 17. Accordingly, payments  
4 range from approximately \$792.05 to \$2,283.19 per person, averaging \$1,526.15 per  
5 person. *Id.* ¶ 18. The total amount to be distributed to participating members is  
6 calculated to be \$1,091,194.44. *Id.*

7 The settlement is non-reversionary, and no amount will revert to Defendant. *Id.*  
8 ¶¶ 1.19, 9.4.

### 9 **III. Attorneys’ Fees, Costs, and Service Awards**

10 The settlement authorizes Class Counsel to petition the court for approval of  
11 attorneys’ fees and costs in an amount not to exceed 30% of the Gross Fund  
12 (\$645,000), reimbursement not to exceed \$175,000 for litigation costs incurred, and  
13 approval of service awards of no more than \$10,000 for each Named Plaintiff. *Id.* ¶¶  
14 4.1, 5.1-5.3.

### 15 **IV. Releases**

16 Under the release, Named Plaintiffs, participating California Class members,  
17 and participating Settlement Collective members will release and discharge Defendant  
18 and related parties from claims for age discrimination arising out of the same set of  
19 operative facts as those in this litigation, except that participating Class Members who  
20 are not participating Settlement Collective members will not release ADEA claims  
21 (“Released Claims”). *Id.* ¶ 11.1. Additionally, Named Plaintiffs, in their individual  
22 capacities, have agreed to a general release, including all known and unknown claims  
23 pursuant to California Civil Code Section 1542 in exchange for their service awards.  
24 *Id.* ¶ 11.3.

### 25 **V. Notice to Settlement Class and Response**

26 On September 9, 2022, the settlement administrator sent notification to the  
27 United States Attorney General, and the Attorneys General in 16 states, pursuant to  
28 CAFA requirements. Talavera Decl. ¶ 13.

1 On September 20, 2022, Defendant provided the settlement administrator with  
2 contact information for all 3,639 potential Collective Members, including 1,748 who  
3 were also California Class Members. *Id.* ¶ 4.

4 The settlement administrator sent the notice and claim form to all individuals by  
5 both mail and email, for a total of 3,639 mailed and 3,369 emailed. *Id.* ¶¶ 5-6. The  
6 settlement administrator estimates a success rate of 95.88% with notice successfully  
7 delivered to 3,489 of the 3,639 members. *Id.* ¶ 8. Reminders via mail and email were  
8 also sent. *Id.* ¶ 9. The notice provided descriptions of the litigation and settlement,  
9 instructions for participating in or opting out of the settlement, instructions for  
10 objecting to the settlement, details on the final settlement approval hearing, contact  
11 information for class counsel, and instructions for obtaining court records. *Id.* at 8-18,  
12 Ex. A.

13 The settlement administrator responded to 578 inquiries regarding the  
14 settlement, and class counsel responded to numerous inquiries as well. Hogue Decl. ¶  
15 4; Talavera Decl. ¶ 12. The settlement administrator received 715 valid claim forms,  
16 no opt-outs, and no objections. Talavera Decl. ¶¶ 16-20.

17 The parties now seek final approval of the settlement. Named Plaintiffs also  
18 seek: attorneys’ fees of 30% of the Gross Fund (\$645,000); reimbursement of  
19 litigation costs and expenses incurred totaling \$170,913.03; and a service award of  
20 \$10,000 for each Named Plaintiff.

21 **MOTION FOR FINAL APPROVAL**

22 **I. Rule 23 California Class Certification and FLSA Settlement Collective**  
23 **Certification**

24 The court previously certified the California Class and Settlement Collective  
25 members merited certification for settlement purposes. Dkt. 220. Nothing has  
26 changed since the conditional certification, and likewise, there is no basis to revisit the  
27 court’s order and analysis. Accordingly, the court maintains its approval.

28 ///

1 **II. Notice**

2 In assessing final approval of a class settlement, the court must determine  
3 whether proper notice has been given. Fed. R. Civ. P. 23(c)(2)(B). The court  
4 previously reviewed and approved the notice in its preliminary approval order. The  
5 parties state both the substance of the notice packets and the dissemination process  
6 complied completely with the settlement plan and the court’s order. Mot. Br. at 11.  
7 Out of 3,639 notices disseminated, no opt-outs or objections were received. Talavera  
8 Decl. ¶¶ 4, 19-20. The court affirms its prior approval and finds the notice to be fair  
9 and adequate.

10 Additionally, the court finds CAFA notice requirements are met. *See* 28 U.S.C.  
11 § 1715. Pursuant to 28 U.S.C. § 1715(b), Defendant satisfied its obligation to provide  
12 notice to the relevant federal and state officials. Pursuant to 28 U.S.C. § 1715(d), the  
13 final approval hearing was held more than 90 days after issuance of such notice.

14 **III. Fairness of Settlement Terms**

15 Under Fed. R. Civ. P. 23(e)(2), the court may approve a proposed class action  
16 settlement only after a hearing and finding that it is fair, reasonable, and adequate after  
17 considering whether:

18 (A) the class representatives and class counsel have adequately represented the  
19 class;

20 (B) the proposal was negotiated at arm’s length;

21 (C) the relief provided for the class is adequate, taking into account:

22 (i) the costs, risks, and delay of trial and appeal;

23 (ii) the effectiveness of any proposed method of distributing relief to the  
24 class, including the method of processing class-member claims;

25 (iii) the terms of any proposed award of attorneys’ fees, including timing  
26 of payment; and

27 (iv) any agreement required to be identified under Rule 23(e)(3); and

28 (D) the proposal treats class members equitably relative to each other.

1 The Ninth Circuit outlined additional factors the court may consider: (1) the  
2 strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of  
3 further litigation; (3) the risk of maintaining class action status throughout trial; (4) the  
4 amount offered in settlement; (5) the extent of discovery completed and the stage of  
5 the proceedings; (6) the experience and views of counsel; (7) the presence of a  
6 governmental participant; and (8) the reaction of the class members to the proposed  
7 settlement. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 963 (9th Cir.  
8 2009); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

9 Settlements of collective action claims under the FLSA also require court  
10 approval. However, a district court is not bound to exercise the same oversight over  
11 the settlement of a collective action as it must exercise over a class action under Rule  
12 23(e). The test under the FLSA is similar to the standards that apply through Rule  
13 23(e), focusing on fairness and reasonableness. A district court presented with a  
14 proposed settlement of FLSA claims may approve the agreement upon finding the  
15 litigation involves a bona fide dispute, the proposed settlement is fair and equitable to  
16 all parties, and the proposed settlement contains a reasonable award of attorneys' fees.  
17 *K.H. v. Sec'y of Dep't of Homeland Sec.*, Case No. 4:15-cv-02740-JST, 2018 WL  
18 3585142, at \*7-8, 13-14 (N.D. Cal. July 26, 2018) (citing *Lynn's Food Stores, Inc. v.*  
19 *U.S.*, 679 F.2d 1350, 1355 (11th Cir. 1982)).

20 In its preliminary approval order, the court previously found the settlement to  
21 be fair, adequate, and reasonable. *See* Dkt. 220. Specifically, the court determined  
22 the settlement agreement "is fair and reasonable as it was adequately negotiated, lacks  
23 obvious deficiencies, does not unfairly favor any member, and falls within the range  
24 of possible approval," "appears to resolve a bona fide dispute concerning Defendant's  
25 liability under the ADEA," and is "fair and equitable to all parties with a reasonable  
26 award of attorney's fees." *Id.* at 15-16. In further support, the court now considers  
27 reactions to the proposed settlement. With a 95.88% notification rate, no objections or  
28 opt-outs, and a 20% valid claims rate, these statistics indicate a favorable settlement

1 and affirm the court's prior determination. *See Nat'l Rural Telecomm. Coop. v.*  
2 *DirectTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established the absence of  
3 a large number of objections to a proposed class action settlement raises a strong  
4 presumption that the terms of a proposed settlement are favorable to the class  
5 members."); *Rodriguez*, 563 F.3d at 967 (finding a 14% claim rate a favorable  
6 reaction to a settlement).

#### 7 **IV. Conclusion as to Final Approval**

8 The court finds the proposed settlement is fair, reasonable, and adequate.  
9 Accordingly, the court GRANTS the Motion for Final Approval. The court confirms  
10 Named Plaintiffs Cathy Sypherd, Patricia Brummett, and Kimberly Watt as Class  
11 Representatives, and confirms Hogue & Belong as Class Counsel.

#### 12 **MOTION FOR FEES, COSTS, AND INCENTIVE AWARDS**

13 As stated, the settlement provides that Class Counsel may apply for attorneys'  
14 fees not to exceed 30% of the Gross Fund, reimbursement of costs not to exceed  
15 \$175,000, and an incentive award up to \$10,000 for each Named Plaintiff. Settlement  
16 ¶¶ 4.1, 5.1.

17 On November 9, 2022, Named Plaintiffs moved for attorneys' fees in the  
18 amount of \$645,000 (30% of the \$2,150,000 Gross Fund), reimbursement of costs and  
19 expenses totaling \$170,913.03, and service awards in the total of \$30,000 (\$10,000  
20 per Named Plaintiff). *See generally* MFA. The requested fees, costs, and service  
21 awards are unopposed.

#### 22 **I. Attorneys' Fees**

23 District courts have discretion to choose between a lodestar method and  
24 percentage method to calculate fees in a class action. *Abelar v. Am. Residential*  
25 *Servs., L.L.C.*, No. 5:19-cv-00726-JAK (JPRx), 2019 WL 6054607, at \*5 (C.D. Cal.  
26 Nov. 14, 2019) (citing *In re Mercury Interactive Corp. Secs. Litig.*, 618 F.3d 988, 992  
27 (9th Cir. 2010)). Courts may also choose one method and cross-check with the other.  
28 *Id.* For class action settlements, the Ninth Circuit has established 25% of the total



1 recovery as a benchmark award for attorneys' fees. *Id.* (citing *Staton v. Boeing Co.*,  
2 327 F.3d 938, 968 (9th Cir. 2003)). However, awarding over this benchmark is not  
3 unusual. See *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D. Cal.  
4 2010) ("The typical range of acceptable attorneys' fees in the Ninth Circuit is 20% to  
5 33 1/3% of the total settlement value, with 25% considered the benchmark . . . in most  
6 common fund cases, the award exceeds that [25%] benchmark."); *In re Activision Sec.*  
7 *Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) ("[I]n most recent cases the  
8 benchmark is closer to 30%").

9 The Ninth Circuit has identified a number of factors a court may consider in  
10 assessing whether an award is reasonable, including: (1) the results achieved; (2) the  
11 risk of litigation; (3) the skill required and quality of work; and (4) the financial  
12 burden carried by the plaintiff. *Resnick v. Frank*, 779 F.3d 934, 954 (9th Cir. 2015);  
13 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). Considering  
14 these factors, the court finds the requested award is reasonable for the following  
15 reasons.

16 First, Class Counsel achieved a favorable settlement of \$2,150,000 Gross Fund.  
17 The settlement provides members with a significant benefit they would not otherwise  
18 receive because "recovery on an individual basis would be dwarfed by the cost of  
19 litigating on an individual basis." *Wolin v. Jaguar Land Power North America, LLC*,  
20 617 F.3d 1168, 1175 (9th Cir. 2010). It is also unlikely members would have known  
21 of the alleged discriminatory hiring practices to pursue individual claims. After  
22 95.88% of the 3,639 class received the approved notice – specifying Class Counsel  
23 would seek up to 30% of the Gross Fund in fees – the settlement administrator  
24 received 715 claim forms, no opt-outs, and no objections. The court interprets this as  
25 a favorable reaction and supports the fee request.

26 Second, the risks associated with continued litigation were significant. Class  
27 Counsel asserts various risks including scarcity of legal authority, Defendant's Motion  
28 for Summary Judgment and unique legal questions, and dueling expert reports. Dkt.

1 222-1 (“MFA Br.”) at 19-21. Further, the Ninth Circuit has recognized “in the  
2 common fund context, attorneys whose compensation depends on their winning the  
3 case, must make up in compensation in the cases they win for the lack of  
4 compensation in the cases they lose.” *In re Washington Pub. Power Supply*, 19 F.3d  
5 1291, 1300-01 (9th Cir. 1994); *Vizcaino*, 290 F.3d at 1051. Thus, the risk associated  
6 with litigating this case supports the fee request.

7 Third, Class Counsel have considerable experience litigating employment class  
8 actions, including certification, trial, and appeal. MFA Br. at 22. Class Counsel  
9 litigated this case for 18 months while propounding 171 document requests, bringing  
10 6 ex parte applications and 7 motions, opposing 6 motions, retaining an expert and  
11 reviewing reports, and negotiating settlement. *Id.* at 2-7, 16. This factor supports the  
12 fee request.

13 Fourth, as considered in the second factor, Class Counsel took this case on a  
14 contingent basis. Courts routinely enhance fees for attorneys who assume  
15 representation in common fund cases on a contingent basis to compensate them for the  
16 risk. *In re Washington Pub. Power Supply*, 19 F.3d at 1299. This supports the fee  
17 request.

18 Finally, a lode-star cross-check corroborates the reasonableness of the request.  
19 In support of their fee request, Class Counsel lodged attorney time sheets for in  
20 camera review, indicating 1,857.5 hours worked through the filing of the Motion for  
21 Attorneys’ Fees, totaling \$1,109,124. Dkt. 224. The requested amount of attorneys’  
22 fees of \$645,000 is significantly lower than their calculated lodestar.

23 The court finds the unopposed request of attorneys’ fees by Class Counsel to be  
24 reasonable at 30% of the Gross Fund.

## 25 **II. Expenses**

26 Class Counsel are also entitled to reimbursement of reasonable out-of-pocket  
27 expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.  
28 1994) (holding that attorneys may recover reasonable expenses that would typically

1 be billed to paying clients in non-contingency matters). Costs under Rule 23(h)  
2 include “nontaxable costs that are authorized by law or by the parties’ agreement.”  
3 Fed. R. Civ. P. 23(h). Here, the Settlement allows for recovery of litigation costs and  
4 expenses up to \$175,000. Settlement ¶ 4.1. Class Counsel seek reimbursement of  
5 \$170,913.03 and provided records documenting their claim. *See* Dkt. 222-2 at 16-25,  
6 Ex. B. This total largely consists of the costs of mediation, expert fees, and court  
7 reporter fees. *Id.* The court finds Class Counsel’s submissions support the requested  
8 award of \$170,913.03 in costs and expenses.

### 9 **III. Incentive Awards**

10 Incentive awards are common in class action cases, where “such awards are  
11 discretionary and are intended to compensate class representatives for work done on  
12 behalf of the class.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir.  
13 2009). Here, the parties negotiated incentive awards of \$10,000 to each Named  
14 Plaintiff, for bringing and maintaining the action for three years, assisting with  
15 discovery, risking reputational injury, and conferring with counsel. MFA Br. at 26-  
16 27; Settlement ¶ 5.1. The court finds Named Plaintiffs’ requested service award of  
17 \$10,000 each, for a total of \$30,000, is reasonable considering the time spent and risks  
18 in bringing and participating in the litigation. Further, the court finds the award of  
19 \$10,000 is consistent with reasonable and just service awards in the Ninth Circuit.  
20 *See Fulford v. Logitech, Inc.*, 2010 WL 807448, at \*3 n.1 (collecting cases awarding  
21 incentive payments ranging from \$5,000 to \$40,000).

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**CONCLUSION**

For the foregoing reasons, the court GRANTS the Motion for Final Approval of Collective and Class Action Settlement (Dkt. 227). The court confirms Named Plaintiffs Cathy Sypherd, Patricia Brummett, and Kimberly Watt as Class Representatives, and confirms Hogue & Belong as Class Counsel. The court GRANTS the Motion for Attorneys’ Fees, Costs and Expenses, and Class Representative Incentive Awards (Dkt. 222) and approves: (1) \$645,000 for attorneys’ fees to Class Counsel; (2) \$170,913.03 for costs and expenses to Class Counsel; and (3) a \$10,000 service award to each Named Plaintiff.

IT IS SO ORDERED.

Dated: February 10, 2023

  
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FERNANDO L. AENLLE-ROCHA  
United States District Judge