

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IAN MITCHINSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

LOVE’S TRAVEL STOPS & COUNTRY STORES, INC., an Oklahoma corporation, and LOVE’S COUNTRY STORES OF CALIFORNIA, a California corporation,

Defendants.

No. 1:15-cv-01474-DAD-BAM

ORDER GRANTING PLAINTIFF’S MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS’ FEES

(Doc. Nos. 37–38.)

This action came before the court on April 18, 2017, for hearing of plaintiff Ian Mitchinson’s motion for final approval of class settlement and motion for attorneys’ fees. (Doc. Nos. 37–38.) The motions are unopposed. Attorneys Stuart Talley and Maggie Realin appeared on behalf of plaintiff Ian Mitchinson. Attorney Chris Truxler appeared on behalf of defendants Love’s Travel Stops & Country Stores, Inc., and Love’s Country Stores of California. Oral argument was heard at that time and the motions were taken under submission. For the reasons discussed below, the court will grant plaintiff’s motions.

FACTUAL BACKGROUND

On September 28, 2015, plaintiff filed a class action complaint against defendants Love’s Travel Stops & Country Stores, Inc. (“Love’s Travel”), and Love’s Country Stores of California

1 (“Love’s Country”). (Doc. No. 1.) Plaintiff brings a single claim for relief, alleging failure to
2 provide itemized wage statements in violation of California Labor Code § 226. (*Id.* at 4.)

3 In his complaint, plaintiff alleges as follows. Defendant Love’s Travel is an Oklahoma
4 corporation that oversees a chain of truck stops and convenience stores, and that forms the parent
5 corporation for Love’s Country, a California corporation. (*Id.* at 2, ¶¶ 4–5.) Plaintiff and other
6 similarly situated employees were employed by defendants. (*Id.*) While employed with
7 defendants, plaintiff and other employees received wage statements that failed to indicate the
8 address of the employer or the inclusive dates for their pay periods. (*Id.* at 3–4, ¶¶ 11–12.)

9 On September 1, 2016, the parties appeared before mediator Steve Cerveris in Los
10 Angeles, California, for mediation. (Doc. No. 38-1 at 8.) While the parties were not able to reach
11 a settlement agreement at the conclusion of the one-day mediation, the parties continued the
12 settlement dialogue with the aid of Mr. Cerveris, and ultimately reached an agreement to settle.
13 (*Id.*)

14 On December 22, 2016, the court granted plaintiff’s motion for preliminary approval of
15 the class action settlement and preliminary class certification. (Doc. No. 34.) In granting the
16 plaintiff’s motion, the court preliminarily certified the proposed class of “[a]ll employees of
17 Defendant in the State of California from September 28, 2014, through April 1, 2015.” (Doc. No.
18 34 at 2.) In addition, the court (i) appointed plaintiff Ian Mitchinson as class representative;
19 (ii) appointed Ilym Group, Inc. as claims administrator; (iii) appointed plaintiff’s class counsel as
20 class representatives; and (iv) approved the proposed notice to class members. (*Id.* at 19.)

21 Class notice was mailed to the settlement class on January 24, 2017. (Doc. No. 38-1 at 8.)
22 The opt-out and objection period closed on March 10, 2017. (Doc. No. 38-2 at 4, ¶ 12.) Of the
23 364 class members, two class members submitted opt-out requests, and no class members
24 objected to the settlement. (*Id.*)

25 On February 23, 2017, plaintiff filed the instant motion for approval of attorneys’ fees and
26 costs and for plaintiff’s service enhancement. (Doc. No. 37.) On March 21, 2017, plaintiff filed
27 their unopposed motion for final approval of class action settlement. (Doc. No. 38.)

28 ////

1 The parties now request that the court confirm certification of the proposed settlement
2 class and approve the terms of the settlement agreement. (Doc. Nos. 37–38.) Under the
3 agreement, defendants will make a gross payment of \$290,000. (Doc. No. 38-1 at 9.) The
4 agreement provides the following allocation for payment: (i) attorneys’ fees of one third, or
5 \$96,666.67 to be paid to class counsel; (ii) litigation costs and expenses of up to \$17,000 be paid
6 to class counsel; (iii) settlement administration costs of up to \$14,500 to be paid to the third party
7 administrator, Ilym Group, Inc.; (iv) class representative fees of \$5,000 to be paid to plaintiff in
8 addition to plaintiff’s entitlement as a class member; (v) the remaining funds (“net settlement
9 amount”) of approximately \$156,834 to be paid to class members. (Doc. No. 38-2 at 4, ¶ 15.)

10 The settlement is non-reversionary, and class members need not submit a claim to receive
11 payment. (Doc. No. 38-1 at 6.) The funds for any settlement checks that remain uncashed for
12 more than 180 calendar days after mailing will be paid to the California Department of Labor
13 Standards Enforcement Unpaid Wage Fund with an identification of the corresponding class
14 member. (*Id.* at 9.)

15 After conducting the final fairness hearing and carefully considering the terms of the
16 settlement, the court now addresses whether the proposed settlement is fair, reasonable, and
17 adequate; and whether class counsel’s request for attorneys’ fees and costs should be granted.

18 LEGAL STANDARD

19 “Courts have long recognized that settlement class actions present unique due process
20 concerns for absent class members.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,
21 946 (9th Cir. 2011) (citation and internal quotations omitted). To protect the rights of absent
22 class members, Rule 23(e) of the Federal Rules of Civil Procedure requires that the court approve
23 all class action settlements “only after a hearing and on finding that it is fair, reasonable, and
24 adequate.” Fed. R. Civ. P. 23(e)(2); *Bluetooth*, 654 F.3d at 946. However, it has been recognized
25 that when parties seek approval of a settlement agreement negotiated prior to formal class
26 certification, “there is an even greater potential for a breach of fiduciary duty owed the class
27 during settlement.” *Bluetooth*, 654 F.3d at 946. Thus, the court must review such agreements
28 with “a more probing inquiry” for evidence of collusion or other conflicts of interest than what is

1 normally required under the Federal Rules. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
2 Cir. 1998); *see also Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012).

3 When parties seek class certification only for purposes of settlement, Rule 23 “demand[s]
4 undiluted, even heightened, attention” to the certification requirements. *Amchem Prods., Inc. v.*
5 *Windsor*, 521 U.S. 591, 620 (1997). The district court must examine the propriety of certification
6 under Rule 23 both at this preliminary stage and at a later fairness hearing. *See, e.g., Ogbuehi v.*
7 *Comcast*, 303 F.R.D. 337, 344 (E.D. Cal. Oct. 2, 2014); *West v. Circle K Stores, Inc.*, No. 04-cv-
8 0438 WBS GGH, 2006 WL 1652598, at *2 (E.D. Cal. June 13, 2006).

9 Review of a proposed class action settlement ordinarily involves two hearings. *See*
10 *Manual for Complex Litigation (4th) § 21.632*. First, the court conducts a preliminary fairness
11 evaluation and, if applicable, considers class certification. *Id.* If the court makes a preliminary
12 determination on the fairness, reasonableness, and adequacy of the settlement terms, the parties
13 are directed to prepare the notice of certification and proposed settlement to the class members.
14 *Id.* (noting that if the parties move for both class certification and preliminary approval, the
15 certification hearing and preliminary fairness evaluation can usually be combined). Second, the
16 court holds a final fairness hearing to determine whether to approve the settlement. *Id.*; *see also*
17 *Narouz v. Charter Commc’ns, Inc.*, 591 F.3d 1261, 1266–67 (9th Cir. 2010).

18 Here, the parties now move for final approval of the class action settlement..

19 ANALYSIS

20 **I. Final Certification of the Settlement Class**

21 The court previously certified the proposed settlement class on a preliminary basis. (Doc.
22 No. 34 at 4–10.) In that order, the court determined that based on the evidence before the court at
23 that time, the requirements of Federal Civil Procedure Rule 23(a) and (b) had been met.
24 Accordingly, the court will not repeat that analysis here. *See Taylor v. FedEx Freight, Inc.*, No.
25 1:13-cv-01137-DAD-BAM, 2016 WL 6038949, at *2 (E.D. Cal. Oct. 13, 2016); *Harris v. Vector*
26 *Mktg.*, No. C–08–5198, 2012 WL 381202, at *3 (N.D. Cal. Feb. 6, 2012) (“As a preliminary
27 matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need
28 not analyze whether the requirements for certification have been met and may focus instead on

1 whether the proposed settlement is fair, adequate, and reasonable”); *cf. Emmons v. Quest*
2 *Diagnostics Clinical Lab., Inc.*, No. 1:13-cv-00474-DAD-BAM, 2017 WL 749018, at *2 (E.D.
3 Cal. Feb. 27, 2017) (revisiting certification analysis on plaintiff’s motion for final approval of
4 class action settlement because the court had expressed reservations about certification in its order
5 granting preliminary approval of settlement). The court therefore certifies the proposed
6 settlement class.

7 **II. Final Approval of the Settlement**

8 A class action may be settled only with the court’s approval. Fed. R. Civ. P. 23(e).
9 “Approval under 23(e) involves a two-step process in which the Court first determines whether a
10 proposed class action settlement deserves preliminary approval and then, after notice is given to
11 class members, whether final approval is warranted.” *Nat’l Rural Telecomms. Coop. v.*
12 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). At the final approval stage, the primary
13 inquiry is whether the proposed settlement “is fundamentally fair, adequate, and reasonable.”
14 *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012); *Hanlon v. Chrysler Corp.*, 150 F.3d
15 1011, 1026 (9th Cir. 1998). “It is the settlement taken as a whole, rather than the individual
16 component parts, that must be examined for overall fairness.” *Hanlon*, 150 F.3d at 1026 (citing
17 *Officers for Justice v. Civil Serv. Comm’n of S.F.*, 688 F.2d 615, 628 (9th Cir. 1982)); *see also*
18 *Lane*, 696 F.3d at 818–19. Having already completed a preliminary examination of the
19 agreement, the court reviews it again, mindful that the law favors the compromise and settlement
20 of class action suits. *See, e.g., In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008);
21 *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City*
22 *of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688
23 F.2d 615, 625 (9th Cir. 1982). Ultimately, “the decision to approve or reject a settlement is
24 committed to the sound discretion of the trial judge because he [or she] is exposed to the litigants
25 and their strategies, positions, and proof.” *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir.
26 2003) (quoting *Hanlon*, 150 F.3d at 1026).

27 To determine whether a settlement is “fair, reasonable, and adequate” under Federal Civil
28 Procedure Rule 23(e), the court is to consider a number of factors, including (i) the strength of the

1 plaintiffs' case; (ii) the risk, expense, complexity, and likely duration of further litigation; (iii) the
2 risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement;
3 (v) the extent of discovery completed and the stage of the proceedings; (vi) the experience and
4 views of counsel; (vii) the presence of a governmental participant; and (viii) the reaction of class
5 members to the proposed settlement. *See Churchill Vill. v. Gen. Elec.*, 361 F.3d 566, 575 (9th
6 Cir. 2004) (citing *Hanlon*, 150 F3d at 1026); *see also Torrasi v. Tucson Elec. Power Co.*, 8 F.3d
7 1370, 1376 (9th Cir. 1993) (noting that not all factors will apply to every class action settlement,
8 and that certain factors may predominate depending on the nature of the case). The court will
9 also consider the procedure by which the parties arrived at the settlement. *See Manual for*
10 *Complex Litigation (Fourth)* § 21.6 (2004); *see also In re Tableware Antitrust Litig.*, No. C-04-
11 3514 VRW, 2007 WL 4219394, at *2 (N.D. Cal. Nov. 28, 2007).

12 **1. Strength of Plaintiff's Case**

13 When assessing the strength of plaintiff's case, the court does not reach "any ultimate
14 conclusions regarding the contested issues of fact and law that underlie the merits of this
15 litigation." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz.
16 1989). The court cannot reach such a conclusion because evidence has not been fully presented.
17 *Id.* Instead, the court is to "evaluate objectively the strengths and weaknesses inherent in the
18 litigation and the impact of those considerations on the parties' decisions to reach these
19 agreements." *Id.*

20 While plaintiff asserts that he is confident in the strength of his case, he acknowledges
21 risks inherent in further litigation of this action. (Doc. No. 38-1 at 14–15.) In particular, plaintiff
22 notes that a jury could find that defendant's violations of California Labor Code § 226 did not
23 result in injury to its employees because those employees were able to determine the dates of the
24 pay period by looking at the "period end" date on their wage statement and calculating one week
25 back. (*Id.* at 14.) Plaintiff concludes that the challenge of demonstrating injury weighs in favor
26 of settlement. (*Id.*)

27 The court finds that consideration of this factor favors approving the settlement.

28 ////

1 **2. Risk, Expense, Complexity, and Likely Duration of Further Litigation, and Risk**
2 **of Maintaining Class Action Status Through Trial**

3 “[T]here is a strong judicial policy that favors settlements, particularly where complex
4 class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
5 2008) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). As a result,
6 “[a]pproval of settlement is preferable to lengthy and expensive litigation with uncertain results.”
7 *Johnson v. Shaffer*, No. 2:12-cv-1059 KJM AC P, 2016 WL 3027744, at *4 (E.D. Cal. May 27,
8 2016) (citing *Morales v. Stevco, Inc.*, No. 09–00704, 2011 WL 5511767, at *10 (E.D. Cal. Nov.
9 10, 2011)).

10 Here, both parties agree that there are risks associated with continued litigation of this
11 action. (Doc. No. 38-1 at 15–16.) Plaintiff faces risks associated with decertification, liability,
12 and damages. (*Id.*) Defendant faces the risk that the certified class could recover on its claims if
13 the case went to trial. (*Id.*) Settlement ultimately allows the parties to avoid the expense of
14 further discovery, dispositive motion filings, trial, and possible subsequent appeals. Accordingly,
15 the court finds that the actual recovery through settlement confers substantial benefits on the class
16 that outweigh the potential recovery that could have been obtained through full adjudication of
17 the action.

18 **3. Settlement Amount**

19 Generally, in evaluating the fairness of a settlement award, the court should “compare the
20 terms of the compromise with the likely rewards of litigation.” *See Protective Comm. for Indep.*
21 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). However,
22 “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential
23 recovery does not per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Secs.*
24 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688
25 F.2d 615, 628 (9th Cir.1982)). .

26 Here, as noted above, the total proposed settlement amount is \$290,000, with
27 approximately \$96,667 allocated for attorneys’ fees, up to \$17,000 for attorney costs, \$14,500 for
28 the cost of administration of the settlement, \$5,000 for the class representative, and \$156,834 for

1 the net settlement fund. (Doc. No. 38-2 at 4, ¶ 15.) Individual payouts will total up to \$7,042,
2 with the average award estimated to be \$433. (Doc. Nos. 38-1 at 19.) Plaintiff represents that the
3 gross settlement amount is over 63% of defendant’s maximum liability for violations of
4 California Labor Code § 226. (*Id.* at 16.)

5 In light of the uncertainties involved in litigating this action, the court concludes that the
6 settlement amount in this case is reasonable. *See In re Tableware Antitrust Litig.*, 484 F. Supp.
7 2d at 1080 (“To evaluate adequacy, courts primarily consider plaintiffs’ expected recovery
8 balanced against the value of the settlement offer.”); *In re Cendant Corp., Derivative Action*
9 *Litig.*, 232 F. Supp. 2d 327, 336 (D. N.J. 2002) (approving settlement representing less than two
10 percent of the maximum possible recovery).

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

12 “In the context of class action settlement, ‘formal discovery is not a necessary ticket to the
13 bargaining table’ where the parties have sufficient information to make an informed decision
14 about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998)
15 (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir. 1982)). Approval of a class
16 action settlement thus “is proper as long as discovery allowed the parties to form a clear view of
17 the strength and weaknesses of their case.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D.
18 443, 454 (E.D. Cal. 2013).

19 Here, the settlement was reached after informed, arm’s length negotiations between the
20 parties. (Doc. No. 38-1 at 18.) Both parties conducted investigation and discovery allowing them
21 to assess the strengths and weaknesses of their case. (*Id.* at 17–18.) In particular, plaintiff
22 propounded interrogatories and document requests on defendants, defendants noticed plaintiff’s
23 deposition, plaintiff noticed a deposition of defendants’ witnesses, both parties produced
24 documents, and the parties conducted several telephonic conferences regarding discovery. (*Id.* at
25 18.)

26 The court concludes that consideration of this factor ultimately weighs in favor of
27 approving the settlement agreement.

28 /////

1 **5. Experience and Views of Counsel;**

2 Plaintiff’s attorneys are experienced in handling class action and labor law litigation.
3 (Doc. No. 28-1 at 18–19.) In the prior order granting preliminary approval of the class action
4 settlement, the court found that plaintiff and class counsel adequately represented the class, and
5 noted that plaintiff’s counsel had provided declarations explaining their educational backgrounds
6 and their prior experience litigating class action cases in federal and state courts. (Doc. No. 34 at
7 8.) Plaintiff’s counsel attest in their motion for final approval of settlement that they believe this
8 settlement affords class members substantial benefits. (*Id.* at 19.) In light of the experience of
9 counsel and their views, this factor too favors approving the settlement. *See Pointer v. Bank of*
10 *Am., N.A.*, No. 2:14-CV-00525-KJM-CKD, 2016 WL 7404759, at *12 (E.D. Cal. Dec. 21, 2016).

11 **6. Presence of a Governmental Participant;**

12 Because there are no separate governmental participants involved in the action, this factor
13 is neutral as to the court’s analysis of the settlement agreement. *See Shaffer*, 2016 WL 3027744,
14 at *5.

15 **7. Reaction of Class to the Proposed Settlement**

16 The absence of objections to a proposed class action settlement supports that the
17 settlement is fair, reasonable, and adequate. *See National Rural Telecommunications*
18 *Cooperative v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“The absence of a single
19 objection to the Proposed Settlement provides further support for final approval of the Proposed
20 Settlement.”) (and cases cited therein); *Barcia v. Contain-A-Way, Inc.*, 3:07-cv-00938-IEG-JMA,
21 2009 WL 587844, at *4 (S.D. Cal. 2009).

22 In this case, the administrator undertook measures to ensure the class members’ receipt of
23 the claim packages, including performing address traces and re-mailing notices. (Doc. No. 38-1
24 at 20.) On January 24, 2017, notices were mailed to all 364 class members. (*Id.*) The notices
25 advised class members of the factual and procedural background of the action, and informed them
26 that they could request exclusion, or object to the settlement. (*Id.*) The administrator received
27 two requests for exclusion and zero objections to the settlement. (*Id.* at 19.)

28 ////

1 On balance, consideration of the *Hanlon* factors weigh in favor of granting final approval
2 of the settlement in this case.

3 **III. Attorneys' Fees and Costs**

4 Plaintiff seeks approval of the attorneys' fees and class representative payment set out in
5 the parties' settlement agreement. (Doc. No. 37.)

6 When a negotiated class action settlement includes an award of attorneys' fees, the fee
7 award must be evaluated in the overall context of the settlement. *See Knisley v. Network Assocs.*,
8 312 F.3d 1123, 1126 (9th Cir. 2002). At the same time, the court "ha[s] an independent
9 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties
10 have already agreed to an amount." *Bluetooth*, 654 F.3d at 941; *see also Zucker v. Occidental*
11 *Petroleum Corp.*, 192 F.3d 1323, 1328–29 (9th Cir. 1999). Where, as here, fees are to be paid
12 from a common fund, the relationship between the class members and class counsel "turns
13 adversarial." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010)
14 (quoting *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir.
15 1994)). As a result, the district court must assume a fiduciary role for the class members in
16 evaluating a request for an award of attorney fees from the common fund. *Id.*; *Rodriguez v. W.*
17 *Publ'g Corp.*, 563 F.3d 948, 968 (9th Cir. 2009).

18 The Ninth Circuit has approved two methods for determining attorneys' fees in such cases
19 where the attorneys' fee award is taken from the common fund set aside for the entire settlement:
20 the "percentage of the fund" method and the "lodestar" method. *Vizcaino v. Microsoft Corp.*, 290
21 F.3d 1043, 1047 (9th Cir. 2002) (citation omitted). The district court retains discretion in
22 common fund cases to choose either method. *Id.*; *Vu v. Fashion Inst. of Design & Merch.*, No.
23 CV 14-08822 SJO (Ex), 2016 WL 6211308, at *5 (C.D. Cal. Mar. 22, 2016). Under either
24 approach, "[r]easonableness is the goal, and mechanical or formulaic application of either
25 method, where it yields an unreasonable result, can be an abuse of discretion." *Fischel v.*
26 *Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002).

27 Under the percentage of the fund method, the court may award class counsel a given
28 percentage of the common fund recovered for the class. *Id.* In the Ninth Circuit, a twenty-five

1 percent award is the “benchmark” amount of attorneys’ fees, but courts may adjust this figure
2 upwards or downwards if the record shows “special circumstances justifying a departure.” *Id.*
3 (quoting *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)).

4 To assess whether the percentage requested is reasonable, courts may consider a number
5 of factors, including

6 [T]he extent to which class counsel achieved exceptional results for
7 the class, whether the case was risky for class counsel, whether
8 counsel’s performance generated benefits beyond the cash
9 settlement fund, the market rate for the particular field of law (in
some circumstances), the burdens class counsel experienced while
litigating the case (e.g., cost, duration, foregoing other work), and
whether the case was handled on a contingency basis.

10 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954–55 (9th Cir. 2015) (internal
11 quotation marks omitted). The Ninth Circuit has permitted courts to award attorneys’ fees using
12 this method “in lieu of the often more time-consuming task of calculating the lodestar.”
13 *Bluetooth*, 654 F.3d at 942.

14 Here, plaintiff brings claims under California law. Previously under California law, “[t]he
15 primary method for establishing the amount of reasonable attorney fees [was] the lodestar
16 method.” *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1053 (2003). Under that method, the
17 court determines the lodestar amount by multiplying a reasonable hourly rate by the number of
18 hours reasonably spent litigating the case. *See Ferland v. Conrad Credit Corp.*, 244 F.3d 1145,
19 1149 (9th Cir. 2001). The product of this computation, the “lodestar” amount, yields a
20 presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir.
21 2013); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). However, the
22 California Supreme Court recently also endorsed the percentage of the fund method for
23 calculating reasonable attorneys’ fees. *See Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 573
24 (2016). Nonetheless, the Ninth Circuit has recommended that district courts apply one method
25 but then cross-check the appropriateness of the amount by employing the other, as well. *See*
26 *Bluetooth*, 654 F.3d at 944.

27 The settlement agreement here includes an award of \$96,666 in attorneys’ fees. (Doc. No.
28 37-1 at 8.) This figure represents thirty three percent of the gross settlement amount. (*Id.*) As

1 discussed above, class counsel has significant experience with class action litigation, and the
2 results of the settlement, if approved, would pay a reasonable amount to each settlement class
3 member. The class members have not filed objections to the settlement, and only two class
4 members have opted out of the settlement class. Moreover, both parties would also face risks if
5 the case proceeded to trial. Finally, as the court noted in its order preliminarily approving
6 settlement, district courts in this circuit have previously approved the thirty three percent
7 attorneys' fees amount requested by plaintiff. (Doc. No. 34 at 15.) Together, these factors
8 support approval of the requested attorneys' fees award.

9 The *Lodestar* amount further supports approval of the requested attorneys' fees award.
10 Plaintiff states that the total *Lodestar* amount is \$95,350. (*Id.* at 12.) Class counsel assert they
11 have collectively spent over 292 hours litigating the case and arranging the settlement, and attach
12 declarations supporting this assertion. (*Id.* at 12.) Plaintiff calculates the *Lodestar* with the
13 following hourly rates for attorneys from the Markham Law Firm: \$400 for David R. Markham,
14 \$380 for Janine R. Menhennet, \$225 for Maggie Realin, and \$175 for Michael Morphew and Ben
15 Travis. (*Id.* at 11.) Plaintiff also has employed an hourly rate of \$400 for Walter L. Haines from
16 the United Employees Law Group, and \$380 for Stuart Talley from Kershaw, Cook & Talley.
17 (*Id.*) Similar rates have been approved in other class actions litigated in this district by class
18 counsel. See *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, No. 2:13-cv-
19 00672-KJM-KJN, 2015 WL 3622999, at *12 (E.D. Cal. June 9, 2015) (approving a rate of \$625
20 per hour for Mr. Haines); *Morgret v. Applus Tech., Inc.*, No. 1:13-cv-01801-JLT, 2015 WL
21 3466389, at *17 (E.D. Cal. June 1, 2015) (finding a rate of \$380 per hour for Mr. Haines was
22 appropriate).

23 Additionally, the *Lodestar* multiplier plaintiff has used to arrive at the requested attorneys'
24 fees award is within the range of multipliers generally awarded to counsel in successful class
25 action litigation. See *Taylor v. FedEx Freight, Inc.*, No. 1:13-cv-01137-DAD-BAM, 2016 WL
26 6038949, at *7 (E.D. Cal. Oct. 13, 2016) (and cases cited therein). Multipliers between 1 and 4
27 are "commonly found to be appropriate in complex class action cases," and plaintiff here requests

28 ////

1 a multiplier of 1.013. *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6,
2 2013); *see also Vizcaino*, 290 F.3d at 1051 n.6.

3 The court finds the requested fees are reasonable, and approves class counsel’s motion for
4 attorneys’ fees.

5 **1. Class Representative Payment**

6 The settlement agreement provides for a class representative incentive payment of \$5,000.
7 (Doc. No. 37-1 at 21.)

8 At its discretion, a district court may award incentive payments to named plaintiffs in
9 class action cases. *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). The
10 purpose of incentive awards is to “compensate class representatives for work done on behalf of
11 the class, to make up for financial or reputational risk undertaking in bringing the action, and,
12 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563
13 F.3d at 958–59.

14 To justify an incentive award, a class representative must present “evidence demonstrating
15 the quality of plaintiff’s representative service,” such as “substantial efforts taken as class
16 representative to justify the discrepancy between [his] award and those of the unnamed
17 plaintiffs.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 669 (E.D. Cal. 2008). Such incentive awards
18 are particularly appropriate in wage-and-hour actions where a plaintiff undertakes a significant
19 reputational risk by bringing suit against their former employers. *Rodriguez*, 563 F.3d at 958–59.

20 The Ninth Circuit has emphasized that “district courts must be vigilant in scrutinizing all
21 incentive awards.” *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013)
22 (internal quotation marks and citation omitted). In particular, district courts have declined to
23 approve incentive awards that represent an unreasonably high proportion of the overall settlement
24 amount, or that are disproportionate relative to the recovery of other class members. *See*
25 *Ontiveros*, 303 F.R.D. at 365–66; *see also Ko v. Natura Pet Prods., Inc.*, Civ. No. 09–2619 SBA,
26 2012 WL 3945541, at *15 (N.D. Cal. Sept. 10, 2012) (holding that an incentive award of
27 \$20,000, comprising one percent of the approximately \$2 million common fund was “excessive
28 under the circumstances” and reducing the incentive award to \$5,000); *Wolph v. Acer Am. Corp.*,

1 No. C 09–01314 JSW, 2013 WL 5718440, at *6 (N.D. Cal. Oct. 21, 2013) (reducing the incentive
2 award to \$2,000 where class representatives did not demonstrate great risk to finances or
3 reputation in bringing the class action). Courts have reasoned that overcompensation of class
4 representatives could encourage collusion at the settlement stage of class actions by causing a
5 divergence between the interests of the named plaintiff and the absent class members, thus
6 jeopardizing adequacy of class representatives. *See Staton*, 327 F.3d at 977–78; *see also*
7 *Radcliffe*, 715 F.3d at 1165 (noting that unreasonably high incentive awards can destroy adequacy
8 of class representatives).

9 In the instant motion, plaintiff argues that the proposed enhancement award of \$5,000 for
10 class representative Ian Mitchinson is warranted, based on: (i) the significant time plaintiff spent
11 pursuing the action on behalf of the class; (ii) the stigma plaintiff will face after bringing a class
12 action wage dispute against his employer; and (iii) the additional litigation-related risks faced by
13 plaintiff in pursuing claims on behalf of the class. (Doc. No. 37-1 at 21–22.) Plaintiff explains
14 that the class representative has assisted in investigation of the claims presented in this action,
15 participated in lengthy interviews and phone conferences with counsel, searched for and provided
16 documents to counsel, responded to discovery, prepared for depositions, reviewed documents and
17 pleadings, remained on stand-by during mediation, and reviewed the instant settlement
18 agreement. (*Id.* at 22.) In its prior order preliminarily approving the parties’ settlement
19 agreement, the court found that that a \$5,000 incentive award was reasonable. The court now
20 approves the requested award.

21 CONCLUSION

22 For all of the reasons set forth above, the court:

- 23 1. Confirms certification of the proposed class for settlement purposes;
- 24 2. Confirms plaintiff’s class counsel as class representatives;
- 25 3. Confirms Ilym Group, Inc. as the claim administrator;
- 26 4. Finds the terms of the proposed settlement agreement to be fair, adequate, and reasonable
27 and to comply with Rule 23(e) of the Federal Rules of Civil Procedure;
- 28 5. Grants the motion for final approval of the class action settlement (Doc. No. 38);

- 1 6. Grants the motion for attorneys' fees (Doc. No. 37);
- 2 7. Orders that the settlement awards be made and administered in accordance with the terms
- 3 of the settlement agreement to the 362 members of the settlement class who did not opt
- 4 out of the settlement;
- 5 8. Orders payment of the class representative service fees to plaintiff Ian Mitchinson in the
- 6 amount of \$5,000 from the settlement fund;
- 7 9. Orders payment for the costs of administration to the claims administrator Ilym Group,
- 8 Inc. in the amount of \$14,500 from the settlement fund;
- 9 10. Orders payment for class counsel fees of \$96,666 and costs up to \$17,000 to be paid from
- 10 the settlement as final payment for and complete satisfaction of any and all attorneys' fees
- 11 and costs incurred by and/or owed to class counsel as set forth in the settlement
- 12 agreement;
- 13 11. Enters this final judgment and orders that parties act in accordance with the terms in the
- 14 settlement agreement;
- 15 12. Declines to maintain jurisdiction to enforce the terms of the parties' settlement agreement.
- 16 *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994)
- 17 (“[E]nforcement of the settlement agreement is for state courts, unless there is some
- 18 independent basis for federal jurisdiction.”).

19 IT IS SO ORDERED.

20 Dated: May 25, 2017

21 
22 _____
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28