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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHARLES W. COOLEY, GRADY
ANDERSON, and NICHOLAS MARONE on
behalf of themselves and all
others similarly situated,

Plaintiffs

v.

INDIAN RIVER TRANSPORT CO., a
Florida Corporation, and DOES 1-
10, inclusive,

Defendant.

No. 1:18-cv-00491

ORDER AND MEMORANDUM RE:
FINAL APPROVAL OF CLASS
SETTLEMENT

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Plaintiffs Charles W. Cooley, Grady Anderson, and
Nicholas Marone were formerly employed by Indian River Transport
Co. ("Indian River") as truck drivers. (First Am. Compl. ("FAC")
¶¶ 1-3 (Docket No. 55).) They brought this putative class action
on behalf of themselves and similarly aggrieved employees. They
allege that Indian River committed various violations of

1 California law¹ by failing to inform its drivers they were
2 entitled to paid meal or rest breaks, not compensating them for
3 rest breaks and other time they were working but not driving, and
4 by providing them with wage statements that did not include all
5 the information required by the Labor Code. (Id. ¶¶ 7-9.)

6 The parties reached a settlement which would resolve
7 plaintiffs' claims against defendant, and the court previously
8 granted preliminary approval of that settlement. (Docket No.
9 71.) Plaintiffs now move for final approval of the settlement
10 pursuant to Federal Rule of Civil Procedure 23(e).

11 I. Factual and Procedural Background

12 Defendant Indian River is a food-grade tank carrier
13 providing transportation throughout the United States; though
14 defendant's headquarters are in Florida, it has a facility,
15 clients, and employee drivers in California. (FAC ¶ 4.) At
16 varying points between September 2011 and October 2017,
17 plaintiffs were employed by defendants to drive routes in and
18 through California. (Id. ¶¶ 1-3.) The claims asserted in the
19 complaint arise out of plaintiffs' work for defendant and concern
20 defendants' alleged pay and wage statement practices.²

21 ¹ Specifically, plaintiffs allege violations of
22 California Labor Code §§ 226 & 512; 226.7; 1194; and 200-03.
23 Plaintiffs also allege violations of California Business and
Professions Code Section 17200, et seq.

24 ² These claims are substantively very similar to those
brought by former Indian River truck drivers Todd Shook and
Herschel Berringer. See Shook v. Indian River Transp. Co., 236
25 F. Supp. 3d 1165 (E.D. Cal. 2017), aff'd, 716 F. App'x 589 (9th
26 Cir. 2018). Following a bench trial, the district court entered
a judgment for defendants in that case. The court ruled that
27 plaintiffs' claims were barred because Indian River had made Safe
Harbor payments under California Labor Code § 226.2, and
28 therefore had an affirmative defense to allegations regarding its
failure to properly compensate its employees for rest periods and

1 Plaintiffs filed this case in May 2017 in Orange County
2 Superior Court. Defendant removed the case to the United States
3 District Court for the Central District of California (Docket No.
4 3) and then, in March 2018, the case was transferred to this
5 district (Docket No. 2). Plaintiffs filed a first amended
6 complaint in June 2018 (Docket No. 55) and, in September 2018,
7 the parties engaged in a full-day mediation in Irvine, CA. By
8 the end of the day, the parties had reached an agreement and
9 executed a memorandum of understanding codifying their intention
10 to settle all claims of plaintiffs and the putative class against
11 defendant for \$1.4 million. (Mem. in Supp. of Mot. for
12 Preliminary Approval of Class Action Settlement at 3-4 (Docket
13 No. 67).)

14 In its order granting preliminary approval of a class
15 and class settlement, the court provisionally certified the
16 following class: "all persons who were employed by Indian River
17 Transport Co. as a truck driver at any time during the period
18 from April 7, 2013 through January 23, 2019, and performed work
19 for Indian River for at least one full day in the State of
20 California at any time." (Order re: Preliminary Approval of
21 Class Settlement at 24 (Docket No. 71).) The court appointed
22 Charles W. Cooley, Grady Anderson, and Nicholas Marone as class
23 representatives, the Desai Law Firm as class counsel, and Rust
24 Consulting, Inc. ("Rust") as settlement administrator. (Id.) The
25 court also approved the notice of settlement and final approval

26 other breaks in the period between July 1, 2012 and December 31,
27 2015. Id. at 1175. Since neither plaintiff had worked for
28 Indian River during the post-Safe Harbor period, i.e. after
Id. January 1, 2016, their claims against Indian River were barred.

1 hearing and opt-out form. The court set the final fairness
2 hearing for May 6, 2019. (Id. at 25.) It directed class counsel
3 to file with the court, within twenty-eight days of the fairness
4 hearing, a petition for an award of attorney's fees and costs;
5 all papers in support of the settlement, incentive award, fees,
6 and costs; and a declaration from the settlement administrator
7 setting forth the services rendered, proof of mailing, and a list
8 of all class members who have commented upon or objected to the
9 settlement. (Id. at 24-25.)

10 After conducting the final fairness hearing and
11 carefully considering the terms of the settlement, the court now
12 addresses whether this class should receive final certification;
13 whether the proposed settlement is fair, reasonable, and
14 adequate; and whether class counsel's request for attorneys' fees
15 and costs, as well as enhancement awards for the representative
16 plaintiffs, should be granted.

17 II. Discussion

18 Judicial policy strongly favors settlement of class
19 actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268,
20 1276 (9th Cir. 1992). "To vindicate the settlement of such
21 serious claims, however, judges have the responsibility of
22 ensuring fairness to all members of the class presented for
23 certification." Staton v. Boeing Co., 327 F.3d 938, 952 (9th
24 Cir. 2003).

25 There are two stages to a court's approval of a
26 proposed class action settlement. In the first phase, the court
27 temporarily certifies a class, authorizes notice to that class,
28 and preliminarily approves the settlement, with final approval

1 contingent on the outcome of a fairness hearing. Ontiveros v.
2 Zamora, No. 2:08-567-WBS-DAD, 2014 WL 3057506, at *2 (E.D. Cal.
3 July 7, 2014.) If a court, as it did in this case, determines
4 that a proposed class action settlement deserves preliminary
5 approval, then notice of the action is given to the class
6 members.

7 In the second phase, the court holds a fairness hearing
8 and entertains class members' objections to both the suitability
9 of the class action as a vehicle for this litigation and the
10 terms of the settlement. See Murillo v. Pac. Gas & Elec. Co.,
11 266 F.R.D. 468, 473 (E.D. Cal. 2010) (Shubb, J.). Following the
12 fairness hearing, the court makes a final determination regarding
13 whether the parties should be allowed to settle the class action
14 pursuant to the agreed upon terms. See Mora v. Cal W. Ag
15 Servs., Inc., No. 1:15-CV-1490 LJO EPG, 2018 WL 3201764, at *3
16 (E.D. Cal. June 28, 2018), report and recommendation adopted, No.
17 1:15-CV-1490 LJO EPG, 2018 WL 4027017 (E.D. Cal. Aug. 22,
18 2018) ("Following the fairness hearing, taking into account all of
19 the information before the court, the court must confirm that
20 class certification is appropriate, and that the settlement is
21 fair, reasonable, and adequate.").

22 Having previously preliminarily certified the proposed
23 class and approved the proposed settlement, the court now makes a
24 final determination as to whether the class should be certified
25 and as to whether the parties should be allowed to settle the
26 class action pursuant to the terms agreed upon.

27 A. Class Certification

28 To be certified, the putative class must satisfy both

1 the requirements of Federal Rule of Civil Procedure 23(a) ("Rule
2 23(a)") and Federal Rule of Civil Procedure 23(b) ("Rule 23(b)").
3 See Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir.
4 2013). In the settlement context, the court's careful scrutiny
5 of the extent to which the putative class complies with the
6 requirements of Rules 23(a) and 23(b) is especially important
7 since the court will "lack the opportunity, present when a case
8 is litigated, to adjust the class, informed by the proceedings as
9 they unfold." Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 620
10 (1997).

11 Rule 23(a) restricts class actions to cases where:

12 (1) the class is so numerous that joinder of all
13 members is impracticable; (2) there are questions of
14 law or fact common to the class; (3) the claims or
15 defenses of the representative parties are typical of
the claims or defenses of the class; and (4) the
representative parties will fairly and adequately
protect the interests of the class.

16 Fed. R. Civ. P. 23(a). These requirements are more commonly
17 known as numerosity, commonality, typicality, and adequacy of
18 representation, respectively. See Leyva, 716 F.3d at 512. While
19 the court must evaluate Rule 23(a)'s requirements independently,
20 they serve a common purpose of "ensur[ing] that the named
21 plaintiffs are appropriate representatives of the class whose
22 claims they wish to litigate." Wal-Mart Stores, Inc. v. Dukes,
23 564 U.S. 338, 349 (2011).

24 In the court's order granting preliminary approval of
25 the settlement, the court found that the putative class satisfied
26 the numerosity, commonality, and typicality requirements of
27 23(a). However, the court expressed some concerns about the
28 adequacy of representation. The court is unaware of any changes

1 that would alter its analysis as to numerosity, typicality, or
2 commonality, and because the parties did not indicate at the
3 fairness hearing that they were aware of any such developments,
4 the court finds these requirements satisfied. The court will thus
5 focus its Rule 23(a) analysis on evaluating adequacy of
6 representation for purposes of final certification.

7 "Resolution of two questions determines legal adequacy:
8 (1) do the named plaintiffs and their counsel have any conflicts
9 of interest with other class members and (2) will the named
10 plaintiffs and their counsel prosecute the action vigorously on
11 behalf of the class?" Hanlon v. Chrysler Corp., 150 F.3d 1011,
12 1020 (9th Cir. 1998).

13 Although the Ninth Circuit has specifically approved
14 the award of "reasonable incentive payments" to named plaintiffs,
15 the use of an incentive award nonetheless raises the possibility
16 that a plaintiff's interest in receiving that award will cause
17 his interests to diverge from the class's interest in a fair
18 settlement. See Staton, 327 F.3d at 977-78. In the order
19 preliminarily approving the proposed settlement, the court
20 expressed concern that the requested \$10,000 incentive awards for
21 class representatives were disproportionately large relative to
22 the average class member's recovery of \$374. (Order Re:
23 Preliminary Approval at 9-11.) Though the final average
24 individual payment of \$450.14 is somewhat larger than the
25 projected average recovery, it is still approximately just one-
26 twentieth of the requested incentive rewards.

27 Plaintiffs Cooley, Anderson, and Marone each submitted
28 a declaration in support of Plaintiffs' Motion for Final

1 approval. (Docket No. 77-8.) These declarations lay out, in
2 moderate detail, each named plaintiff's contributions to the
3 class. Plaintiff Cooley declares that he spent between 175 and
4 200 hours assisting his attorneys in the prosecution of this
5 matter. (Cooley Decl. ¶ 11) He participated in discovery,
6 attended in person and telephonic meetings with plaintiffs'
7 counsel, and participated in mediation. (Id. ¶¶ 5, 7, 10.)
8 Plaintiffs Anderson and Marone both estimate that they spent
9 between 55 and 75 hours assisting class counsel with the
10 prosecution of this case (Anderson Decl. ¶ 9; Marone Decl. ¶ 9).
11 Like Plaintiff Cooley, their contributions encompassed submitting
12 declarations when requested, participating in discovery, and
13 regularly conferring with class counsel. (Anderson Decl. ¶¶ 5, 7;
14 Marone Decl. ¶¶ 5, 7).

15 The court is satisfied with the evidence of plaintiffs'
16 substantial efforts taken as class representatives. In light of
17 plaintiffs' contributions to the prosecution of this action, the
18 court finds that the requested \$10,000 incentive awards are
19 reasonable and will not impair the alignment of plaintiffs'
20 interests and those of the class.

21 Because the order granting preliminary approval also
22 found the second step of the adequacy analysis satisfied (Order
23 Re: Preliminary Approval at 11), and nothing has come to the
24 court's attention that would change its analysis, the court
25 determines that plaintiffs are adequate class representatives.

26 An action that meets all the prerequisites of Rule
27 23(a) may only be certified as a class action if it also
28 satisfies the requirements of one of the three subdivisions of

1 Rule 23(b). Leyva, 716 F.3d at 512. Plaintiffs seek
2 certification under Rule 23(b)(3), which provides that a class
3 action may be maintained only if (1) "the court finds that
4 questions of law or fact common to class members predominate over
5 questions affecting only individual members" and (2) "that a
6 class action is superior to other available methods for fairly
7 and efficiently adjudicating the controversy." Fed. R. Civ. P.
8 23(b)(3).

9 In its order granting preliminary approval of the
10 settlement, the court found that both prerequisites of Rule
11 23(b)(3) were satisfied. (Order Re: Preliminary Approval at 12-
12 14.) The court is unaware of any changes that would affect this
13 conclusion.

14 Having determined that the proposed class satisfies the
15 requirements of both Federal Rule of Civil Procedure 23(a) and
16 Federal Rule of Civil Procedure 23(b), the court will grant final
17 certification to the proposed class.

18 B. Rule 23(c)(2) Notice Requirements

19 If the court certifies a class under Rule 23(b)(3), it
20 "must direct to class members the best notice that is practicable
21 under the circumstances, including individual notice to all
22 members who can be identified through reasonable effort." Fed.
23 R. Civ. P. 23(c)(2)(B). Actual notice is not required. Silber
24 v. Mabon, 18 F.3d 1449 (9th Cir. 1994). The notice provided to
25 absent class members, however, must be "reasonably certain to
26 inform the absent members of the plaintiff class". Id. at 1454
27 (quoting In re Victor Techs. Sec. Litig., 792 F.2d 862, 865 (9th
28 Cir. 1986).)

1 As provided by the Settlement Agreement, the settlement
2 administrator, Rust, mailed notice of the settlement to the last
3 known address of all class members. (Schwartz Decl. ¶ 9 (Docket
4 No. 77-9).) Rust used the National Change of Address Database to
5 update the class list. (See id. ¶ 8.) If a class member's
6 notice packet was returned as undeliverable without a forwarding
7 address, Rust performed an address trace. (Id. ¶ 10.)
8 Ultimately, only 37 notices of 1,920 were undeliverable because
9 Rust was unable to find a correct address. (Id.) The court is
10 satisfied that this system of providing notice was reasonably
11 calculated to provide notice to class members and was the best
12 form of notice available under the circumstances.

13 Likewise, the notice itself clearly identified the
14 options available to putative class members -- do nothing,
15 dispute, or opt out -- and comprehensively explained the nature
16 and mechanics of the settlement. (See Schwartz Decl. Ex. A.)
17 The content of the notice is therefore sufficient to satisfy Rule
18 23(c)(2)(B). See Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d
19 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it
20 'generally describes the terms of the settlement in sufficient
21 detail to alert those with adverse viewpoints to investigate and
22 to come forward and be heard.'" (quoting Mendoza v. Tucson Sch.
23 Dist. No. 1., 623 F.2d 1338, 1352 (9th Cir. 1980))).

24 C. Rule 23(e): Fairness, Adequacy, and Reasonableness of
25 Proposed Settlement

26 Having determined that the proposed class satisfies the
27 requirements of Rule 23, the court will now examine whether the
28 terms of the parties' settlement appear fair, adequate, and
reasonable. See Fed. R. Civ. P. 23(e)(2). This process requires

1 the court to "balance a number of factors," including:

2 the strength of the plaintiff's case; the risk,
3 expense, complexity, and likely duration of further
4 litigation; the risk of maintaining class action
5 status throughout the trial; the amount offered in
6 settlement; the extent of discovery completed and the
stage of the proceedings; the experience and views of
counsel; the presence of a governmental participant;
and the reaction of the class members to the proposed
settlement.

7
8 Hanlon, 150 F.3d at 1026. The court will address each in turn

9 1. Strength of Plaintiff's Case

10 An important consideration is the strength of
11 plaintiff's case on the merits compared to the settlement amount
12 offered. DIRECTV, 221 F.R.D. at 526. The court, however, is not
13 required to reach an ultimate conclusion of the merits, "for it
14 is the very uncertainty of outcome in litigation and avoidance of
15 wastefulness and expensive litigation that induce consensual
16 settlements." Officers for Justice v. Civ. Serv. Comm'n of City
17 & Cty of S.F., 688 F.2d 615, 625 (9th Cir. 1982).

18 Plaintiffs allege claims under the California Labor
19 Code and California's Unfair Competition Law arising out of their
20 employment as truck drivers who work, or worked, for defendant
21 Indian River in the State of California. Specifically,
22 plaintiffs claim that they were not separately compensated for
23 breaks and non-driving work and that they were not issued
24 accurate wage statements. If this case were to proceed to trial,
25 defendant would likely argue that plaintiffs' claims are barred
26 by res judicata. (Mot. for Preliminary Approval at 11 (Docket
27 No. 7).)

28 In comparing the strength of plaintiff's case with the

1 proposed settlement, the court finds that the proposed settlement
2 is a fair resolution of the issues in this case.

3 2. Risk, Expense, Complexity, and Likely Duration of
4 Further Litigation

5 Further litigation could greatly delay resolution of
6 this case and increase expenses. Prior to any judgment, the
7 parties would have had to litigate class certification, which
8 would have required additional discovery, time, and expense.
9 Appeals are also likely in this case and create additional
10 uncertainty and delay. (Id. at 12.) These factors weigh in
11 favor of settlement of the action.

12 3. Risk of Maintaining Class Action Status Throughout
13 Trial

14 The court is unaware of any specific difficulty in
15 maintaining class-action status in this case were the matter to
16 continue to trial. Although plaintiff's counsel describes a
17 "very real risk that the case would not be certified" (Desai
18 Decl. P 25 (Docket No. 67-1), he does not reference any specific
19 future development that could upset certification. Accordingly,
20 the court will not consider this factor in its analysis. See In
21 re Veritas Software Corp. Sec. Litig., No. 03-0283, 2005 WL
22 3096079, at *5 (N.D. Cal. Nov.15, 2005) (favoring neither
23 approval nor disapproval of settlement where the court was
24 "unaware of any risk involved in maintaining class action
25 status"), aff'd in relevant part, 496 F.3d 962 (9th Cir. 2007).

26 4. Amount Offered in Settlement

27 In determining whether a settlement agreement is
28 substantively fair to class members, the court must balance the
value of expected recovery against the value of the settlement
offer. See In re Tableware Antitrust Litig., 484 F. Supp. 2d

1 1078, 1080 (N.D. Cal. 2007). This inquiry may involve
2 consideration of the uncertainty class members would face if the
3 case were litigated to trial. See Ontiveros, 2014 WL 3057506, at
4 *14. Plaintiffs' counsel estimates defendant's total exposure at
5 over \$12,000,000. (Desai Decl. ¶ 25.) This estimate is based
6 upon the defendant's Notice of Removal (Docket No. 3), which
7 stated the amounts in controversy for plaintiff's causes of
8 action as follows: (1) \$2,663,250 for failure to advise employees
9 of right to take meal breaks; (2) \$2,663,250 for failure to
10 advise employees of right to take rest breaks; (3) \$3,309,026 for
11 failure to pay all wages for sleeper berth time (for the
12 California resident class only); and (4) \$3,960,504 for waiting
13 time penalties. (Notice of Removal ¶ 40.)

14 The proposed gross settlement amount of \$1.4 million is
15 just over 11% of the estimated potential recovery in this case.
16 Class counsel represents that the \$12 million pretrial recovery
17 does not account for the delay of litigation; the risk that the
18 class may not be certified; or the possibility that some claims
19 may fail. (Desai Decl. ¶ 25.) Though this settlement represents
20 far less than the plaintiffs could have potentially secured had
21 the case gone to trial, it is not plainly deficient. See
22 Officers for Justice, 688 F.2d at 628 ("It is well-settled law
23 that a cash settlement amounting to only a fraction of the
24 potential recovery will not per se render the settlement
25 inadequate or unfair.") Thus, in light of the risks and expense
26 of further litigation in this matter, the court finds the
27 settlement amount to be fair and adequate.

28 5. Extent of Discovery and the State of Proceedings

1 This matter was initially filed in state court and then
2 removed to the United States District Court for the Central
3 District. (Mot for Prelim. Approval at 3.) There, Judge Carter
4 issued a scheduling order setting out discovery deadlines.
5 (Docket No. 22.) Plaintiffs then filed a Motion for Class
6 Certification. (Docket No. 33.) Adjudication of that motion was
7 stayed pending the resolution of a Motion to Change Venue filed
8 by defendant Indian River Transport. (Docket No. 39.) Though
9 plaintiffs opposed defendant's Motion to Transfer Venue,
10 defendant prevailed, and the case was transferred to the Eastern
11 District of California. (Docket No. 41.)

12 The parties engaged in a full day of mediation before
13 Judge Gail Andler (Ret.) in Irvine, CA and ultimately reached a
14 settlement before discovery or motion deadlines were set by this
15 court. (See Docket Nos. 59 & 62.) This relatively early
16 settlement was facilitated by the parties previous participation
17 in Shook v. Indian River Transport Co., No. 1:14-CV-1415 WBS BAM,
18 a related case which culminated in a two-day bench trial and an
19 appeal to the Ninth Circuit. (See Desai Decl. ¶ 9.) Thus,
20 although this factor is not essential to the settlement of a
21 class action, see Lachance v. Harrington, 965 F. Supp. 630, 644-
22 45 (E.D. Pa. 1997), the court finds that, on balance, it weighs
23 slightly in favor of settlement in this case.

24 6. Experience and Views of Counsel

25 Plaintiff's counsel has extensive experience litigating
26 class actions, including those involving employment law and wage
27 and hour enforcement. (Desai Decl. ¶¶ 11-12 (Docket No. 67-1).)
28 Based on his experience, plaintiff's counsel believes the

1 proposed settlement is fair, reasonable, and adequate to the
2 class members. (Mot. for Final Approval at 12.) The court gives
3 considerable weight to class counsel's opinions regarding the
4 settlement due to counsel's experience and familiarity with the
5 litigation. Alberto v. GMRI, Inc., No. CIV 07-1895 WBS DAD, 2008
6 WL 4891201, at *10 (E.D. Cal. Nov. 12, 2008). This factor thus
7 supports approval of the settlement agreement.

8 7. Presence of Government Participant

9 No governmental entity participated in this matter;
10 this factor, therefore, is irrelevant to the court's analysis.

11 8. Reaction of the Class Members to the Proposed
12 Settlement

13 Notice of the settlement was sent to 1,920 class
14 members and only eight class members submitted requests for
15 exclusion prior to the March 25, 2019 deadline. (Schwartz Decl. ¶
16 13.) No class members have objected. (Id. ¶ 14.) "It is
17 established that the absence of a large number of objections to a
18 proposed class action settlement raises a strong presumption that
19 the terms of a proposed class settlement action are favorable to
20 the class members." DIRECTV, 221 F.R.D. at 529. Accordingly,
21 this factor weighs in favor of the court's approval of the
22 settlement.

23 Having considered the foregoing factors, the court
24 finds the settlement is fair, adequate, and reasonable pursuant
25 to Rule 23(e).

26 D. Attorney's Fees and Costs

27 If a negotiated class action settlement includes an
28 award of attorney's fees, the court "ha[s] an independent
obligation to ensure that the award, like the settlement itself,

1 is reasonable, even if the parties have already agreed to an
2 amount.” In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d
3 935, 941 (9th Cir. 2011).

4 When, as in the instant case, a federal court sits in
5 diversity, state law governs the right to fees as well as the
6 calculation of fees. See Mangold v. California Pub. Utils.
7 Comm’n, 67 F.3d 1470 (9th Cir. 1995). In California, “when a
8 number of persons are entitled in common to a specific fund, and
9 an action brought by a plaintiff or plaintiffs for the benefit of
10 all results in the creation or preservation of that fund, such
11 plaintiff or plaintiffs may be awarded attorneys’ fees out of the
12 fund.” Serrano v. Priest, 20 Cal. 3d 25, 34 (1977).

13 California courts calculating a reasonable award of
14 attorneys’ fees may do so either by taking a percentage of the
15 benefit secured for the class, or by using a lodestar.
16 Richardson v. THD At-Home Servs., Inc., No. 1:14-CV-0273-BAM,
17 2016 WL 1366952, at *7 (E.D. Cal. Apr. 6, 2016). However, there
18 is no “definitive set of factors that California courts mandate
19 or endorse for determining the reasonableness of attorneys’ fees
20 in the context of a common-fund percentage-of-the-benefit
21 approach.” Id. Accordingly, this court will turn to Ninth
22 Circuit case law on the reasonableness of attorneys’ fee awards
23 in evaluating plaintiffs’ counsel’s request. See id.

24 Given that the percentage method is particularly
25 appropriate in common fund cases where “the benefit to the class
26 is easily quantified,” Bluetooth, 654 F.3d at 942, this court
27 will use the percentage method in evaluating plaintiffs’
28 counsel’s requested fees. The Ninth Circuit has approved a

1 "benchmark" percentage of 25%, and courts may adjust this figure
2 upwards or downwards if the record shows "'special circumstances'
3 justifying a departure." Id. (quoting Six (6) Mexican Workers v.
4 Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990). In
5 evaluating whether a percentage fee award is reasonable, the
6 court may consider factors such as, inter alia, the results
7 secured for the class, awards in similar cases, and the degree of
8 risk assumed by counsel. Romero v. Producers Dairy Foods, Inc.,
9 No. 1:05-CV00484 DLB, 2007 WL 3492841, at *3 (E.D. Cal. Nov. 14,
10 2007). Courts evaluating the reasonableness of an attorney fee
11 award have also considered the presence, or absence, of
12 objections to the award from class members. See In re Heritage
13 Bond Litig., No. 02-ML-1475 DT, 2005 WL 1594403, at *21 (C.D.
14 Cal. June 10, 2005) ("The absence of objections or disapproval by
15 class members to Class Counsel's fee request further supports
16 finding the fee request reasonable.")

17 The total settlement in this case is \$1,400,000.
18 Applying the 25% benchmark, the percentage of recovery method
19 would justify a fee award of \$350,000. Plaintiffs argue,
20 however, that an award of \$462,000, or 33% of the common fund, is
21 more appropriate in this case. (Mem. in Supp. of Mot. for Final
22 Approval of Class Action Settlement at 25.)

23 There are several factors that collectively indicate
24 the reasonableness of the requested fee award. First, class
25 counsel secured a favorable settlement for the class: each class
26 member who did not opt out will receive an average of \$450.14
27 without having to make a claim or submit documentation. (Id. at
28 21.) Second, class counsel litigated this matter on a

1 contingency basis (Desai Decl. ¶ 6) and, in doing so, assumed a
2 significant risk that they would not be compensated for this
3 work. In the nearly two years since this case began in May 2017,
4 plaintiff's counsel has invested a total of 553 attorney and
5 paralegal hours in this case and have not yet received any
6 payment for them. (Desai Decl. ¶ 8.) Third, in wage and hour
7 class actions that result in a common fund of less than \$10
8 million, "California district courts usually award attorneys'
9 fees in the range of 30-40%." Miller v. CEVA Logistics USA,
10 Inc., No. 2:13-CV-01321 TLN, 2015 WL 4730176, at *8 (E.D. Cal.
11 Aug. 10, 2015). See, e.g., Vasquez v. Coast Valley Roofing,
12 Inc., 266 F.R.D. 482, 492 (E.D. Cal. 2010) (holding that an
13 attorney's fee award of approximately 33.3% of the total recovery
14 was "fair and reasonable" in a wage and hour class action with a
15 gross settlement payment of \$300,000). A fourth and final factor
16 supporting the reasonableness of the requested fee award is the
17 lack of objections from class members to the proposed award.
18 (See Schwartz Decl. ¶ 14.)

19 Thus, in light of the result plaintiffs' counsel
20 obtained for class members, the risks counsel incurred by taking
21 this case on a contingency basis, the fees usually awarded in
22 these types of cases, and the absence of objections to the
23 requested fee award, the court finds that one third of the common
24 fund is a reasonable award. Accordingly, the court will allow
25 the award of attorneys' fees in the amount of \$462,000.

26 In its order granting preliminary approval of the
27 proposed class settlement, the court expressed skepticism about
28 class counsel's request for an award of \$27,326.55 in costs.

1 (Order Re: Preliminary Approval of Class Settlement at 23.) That
2 figure included not only expenses associated with this matter,
3 but also those associated with Shook v. Indian River Transport
4 Co., No. 1:14-CV-1415 WBS BAM, and the court stated that
5 "plaintiff has not convincingly shown that the class members in
6 this case ought to pay for the loss in Shook." (Order Re:
7 Preliminary Approval of Class Settlement at 23.) The Motion for
8 Final Approval and for Attorney's Fees and Costs addresses this
9 concern by requesting reimbursement for only those costs
10 associated with this matter. (Mot. for Final Approval at 24-25.)
11 The court has reviewed the class counsel's costs workbook (Docket
12 No. 67-7) and finds that the requested \$10,000 costs' award to be
13 reasonable.³ All of the requested expenses are for services that
14 are routinely and properly reimbursed, i.e. transcription,
15 mediation, and court filing costs. Accordingly, the court will
16 allow the award of costs in the amount of \$10,000.

17 IT IS THEREFORE ORDERED that plaintiffs' motion for
18 final approval of the class and class action settlement be, and
19 the same hereby is, GRANTED. IT IS FURTHER ORDERED THAT:

20 (1) solely for the purpose of this settlement, and
21 pursuant to Federal Rule of Civil Procedure 23, the court hereby
22 certifies the following class:

23 All persons who were employed by Indian River
24 Transport Co. as a truck driver at any time during the
25 period from April 7, 2013 through January 21, 2019,
26 and performed work for Indian River for at least one

27 ³ The requested \$10,000 is also slightly less than the
28 \$10,218.45 in costs class counsel expended on this matter.

1 full day in the State of California at any time.

2 (2) the court appoints the named plaintiffs Charles W.
3 Cooley, Grady Anderson, and Nicholas Marone as representatives of
4 the class and finds that they meet the requirements of Rule 23;

5 (3) the court appoints Desai Law Firm, P.C., as counsel
6 to the settlement class, and finds that counsel meets the
7 requirements of Rule 23;

8 (4) the Settlement Agreement's plan for class notice
9 is the best notice practicable under the circumstances and
10 satisfies the requirements of due process and Rule 23. The plan
11 is approved and adopted. The notice to the class complies with
12 Rule 23(c) (2) and Rule 23(e) and is approved and adopted.

13 (5) having found that the parties and their counsel
14 took appropriate efforts to locate and inform all putative class
15 members of the settlement, and given that no class members filed
16 an objection to the settlement, the court finds and orders that
17 no additional notice to the class is necessary;

18 (6) as of the date of the entry of this order,
19 plaintiff and all class members who have not timely opted out of
20 this settlement hereby do and shall be deemed to have fully,
21 finally, and forever released, settled, compromised,
22 relinquished, and discharged defendants of and from any and all
23 settled claims, pursuant to the release provisions stated in the
24 parties' Settlement Agreement;

25 (7) plaintiff's counsel is entitled to fees in the
26 amount of \$462,000 and costs in the amount of \$10,000.

27 (8) the named plaintiffs are each entitled to an
28 incentive payment of \$10,000; and

1 (9) this action is dismissed with prejudice; however,
2 without affecting the finality of this order, the court shall
3 retain continuing jurisdiction over the interpretation,
4 implementation, and enforcement of the settlement agreement with
5 respect to all parties to this action and their counsel of
6 record.

7 The Clerk is instructed to enter judgment accordingly.

8 Dated: May 10, 2019



9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE
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