

1 To avoid repetition, the court will refrain from
2 reciting the factual and procedural background, which remains the
3 same as in its October 6, 2015 Order granting plaintiff's partial
4 motion for summary judgment on plaintiff's itemized wage
5 statement claim and denying defendant's cross-motion for summary
6 judgment. (Oct. 6, 2015 Order (Docket No. 33).)

7 I. Discussion

8 Rule 23(e) provides that "[t]he claims, issues, or
9 defenses of a certified class may be settled . . . only with the
10 court's approval." Fed. R. Civ. P. 23(e). "Approval under 23(e)
11 involves a two-step process in which the Court first determines
12 whether a proposed class action settlement deserves preliminary
13 approval and then, after notice is given to class members,
14 whether final approval is warranted." Nat'l Rural Telecomms.
15 Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004)
16 (citing Manual for Complex Litig., Third, § 30.41 (1995)).

17 The Ninth Circuit has declared a strong judicial policy
18 favoring settlement of class actions. Class Plaintiffs v. City
19 of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless,
20 where, as here, "the parties reach a settlement agreement prior
21 to class certification, courts must peruse the proposed
22 compromise to ratify both [1] the propriety of the certification
23 and [2] the fairness of the settlement." Staton v. Boeing Co.,
24 327 F.3d 938, 952 (9th Cir. 2003).

25 A. Class Certification

26 A class action will be certified only if it meets the
27 four prerequisites identified in Rule 23(a) and additionally fits
28 within one of the three subdivisions of Rule 23(b). Fed. R. Civ.

1 P. 23(a)-(b). Although a district court has discretion in
2 determining whether the moving party has satisfied each Rule 23
3 requirement, the court must conduct a rigorous inquiry before
4 certifying a class. See Califano v. Yamasaki, 442 U.S. 682, 701
5 (1979); Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 161 (1982).

6 1. Rule 23(a) Requirements

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

8 (1) the class is so numerous that joinder of all
9 members is impracticable; (2) there are questions of
10 law or fact common to the class; (3) the claims or
11 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.

12 Fed. R. Civ. P. 23(a). These requirements are more commonly
13 referred to as numerosity, commonality, typicality, and adequacy
14 of representation.

15 a. Numerosity

16 "A proposed class of at least forty members
17 presumptively satisfies the numerosity requirement." Avilez v.
18 Pinkerton Gov't Servs., 286 F.R.D. 450, 456 (C.D. Cal. 2012); see
19 also, e.g., Collins v. Cargill Meat Solutions Corp., 274 F.R.D.
20 294, 300 (E.D. Cal. 2011) (Wanger, J.) ("Courts have routinely
21 found the numerosity requirement satisfied when the class
22 comprises 40 or more members."). Here, plaintiff estimates the
23 proposed class will contain approximately 2,100 members. (See
24 Pl.'s Mot. for Prelim. Approval of Class Settlement ("Pl.'s
25 Mot.") at 1 (Docket No. 80-1).) This easily satisfies the
26 numerosity requirement.

27 b. Commonality

28 Commonality requires that the class members' claims

1 "depend upon a common contention" that is "capable of classwide
2 resolution--which means that determination of its truth or
3 falsity will resolve an issue that is central to the validity of
4 each one of the claims in one stroke." Wal-Mart Stores, Inc. v.
5 Dukes, 131 S. Ct. 2541, 2550 (2011). "[A]ll questions of fact
6 and law need not be common to satisfy the rule," and the
7 "existence of shared legal issues with divergent factual
8 predicates is sufficient, as is a common core of salient facts
9 coupled with disparate legal remedies within the class." Hanlon
10 v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

11 The proposed class has two subclasses: the "Wage
12 Statement Settlement Class" and the "Vehicle Expense
13 Reimbursement Class." (Pl.'s Mot. at 16.) The Wage Statement
14 Settlement Class includes all employees who worked as sales
15 representatives for defendant from October 1, 2010 to the date
16 this Order is signed. (Suppl. Workman Decl. Ex. A, Joint
17 Stipulation and Agreement of Compromise and Settlement of Class
18 Action ("Settlement Agreement") ¶ 2.23 (Docket No. 81).) The
19 Vehicle Expense Reimbursement Class includes all employees who
20 worked as sales representatives for defendant from October 1,
21 2010 to the date this Order is signed and employees who worked
22 for defendant as sales managers from July 1, 2013 to the date
23 this Order is signed. (Id. ¶ 2.24.) The class would be
24 comprised of individuals alleging, like the named plaintiff, that
25 defendant failed to record their total hours worked on their wage
26 statements and to reimburse them for all expenses incurred while
27 driving their personal vehicles for work. Due to the common core
28 of salient facts and legal contentions, the proposed class meets

1 the commonality requirement.

2 c. Typicality

3 Typicality requires that the named plaintiff have
4 claims "reasonably coextensive with those of absent class
5 members," but their claims do not have to be "substantially
6 identical." Hanlon, 150 F.3d at 1020. The test for typicality
7 "is whether other members have the same or similar injury,
8 whether the action is based on conduct which is not unique to the
9 named plaintiffs, and whether other class members have been
10 injured by the same course of conduct." Hanon v. Dataproducts
11 Corp., 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted).

12 The putative class members allege a simple set of facts
13 that is essentially identical to that alleged by the named
14 plaintiff. Both the class members and the named plaintiff were
15 allegedly injured by being inadequately reimbursed for driving
16 their personal vehicles and unable to ascertain their total hours
17 worked from their wage statements. While each class member
18 worked for defendant for different amounts of time during the
19 relevant period and, as a result, is owed different amounts,
20 class members' claims appear to be reasonably coextensive with
21 those of the named plaintiff. Moreover, the differences in the
22 amounts owed are taken into account by the settlement agreement,
23 which allots payments based on the number of work weeks each
24 class member was employed by defendant during the class period.
25 (Pl.'s Mot. at 9.) The proposed class therefore meets the
26 typicality requirement.

27 d. Adequacy of Representation

28 To resolve the question of adequacy, the court must

1 make two inquiries: "(1) do the named plaintiffs and their
2 counsel have any conflicts of interest with other class members
3 and (2) will the named plaintiffs and their counsel prosecute the
4 action vigorously on behalf of the class?" Hanlon, 150 F.3d at
5 1020. These questions involve consideration of a number of
6 factors, including "the qualifications of counsel for the
7 representatives, an absence of antagonism, a sharing of interests
8 between representatives and absentees, and the unlikelihood that
9 the suit is collusive." Brown v. Ticor Title Ins., 982 F.2d 386,
10 390 (9th Cir. 1992).

11 There do not appear to be any conflicts of interest.
12 The named plaintiff's interests are generally aligned with the
13 putative class members. As discussed above, the class members
14 suffered a similar injury as the named plaintiff and the
15 definition of the class is narrowly tailored. See Amchem
16 Products, Inc. v. Windsor, 521 U.S. 591, 625-26 (1997) ("[A]
17 class representative must be part of the class and possess the
18 same interest and suffer the same injury as the class members.").

19 While the provision of an incentive award raises the
20 possibility that the named plaintiff's interest in receiving that
21 award will cause its interests to diverge from the class's
22 interest in a fair settlement, the Ninth Circuit has specifically
23 approved the award of "reasonable incentive payments." Staton,
24 327 F.3d at 977-78. The court, however, must "scrutinize
25 carefully the awards so that they do not undermine the adequacy
26 of the class representatives." Radcliffe v. Experian Info. Sys.,
27 Inc., 715 F.3d 1157, 1163 (9th Cir. 2013). "In general, courts
28 have found that \$5,000 incentive payments are reasonable."

1 Hopson v. Hanesbrands Inc., Civ. No. 08-0844 EDL, 2009 WL 928133,
2 at *10 (N.D. Cal. Apr. 3, 2009) (citing In re Mego Fin. Corp.
3 Sec. Litig., 213 F.3d 454, 463 (9th Cir. 2000); In re SmithKline
4 Beckman Corp., 751 F. Supp. 525, 535 (E.D. Pa. 1990); Alberto v.
5 GMRI, Inc., 252 F.R.D. 652, 669 (E.D. Cal. 2008)).

6 In this case, the settlement agreement provides an
7 incentive award of \$7,500 to the named plaintiff. (Pl.'s Mot. at
8 9.) While the incentive award for the named plaintiff is
9 relatively high, it does not, on its face appear to create a
10 conflict of interest given that it is proportionate to the
11 settlement awards the class members stand to receive. The gross
12 settlement amount in this case is \$2.7 million. Subtracting the
13 \$7,500 incentive award, \$891,500 proposed attorney's fees,
14 \$90,000 proposed costs, and \$18,750 proposed Private Attorneys
15 General Act allocation to be paid to the California Labor &
16 Workforce Development Agency, the total available funds for class
17 members is \$1,692,250. Assuming all 2,100 class members submit
18 claim forms, the average recovery per class member will be about
19 \$805.83 (not taking into account the number of work weeks each
20 class member was employed). Class members could recover an even
21 higher amount if all 2,100 class members do not submit claim
22 forms.

23 In addition, plaintiff provides important justification
24 for the incentive award by explaining that she has dedicated at
25 least forty hours to this case--consulting with her attorney;
26 traveling from Stockton to Sacramento for her deposition;
27 assisting in answering document requests, interrogatories, and
28 requests for admissions; searching for documents and requested

1 information; and making herself available to answer any potential
2 questions during the depositions and mediation sessions.

3 (Garnett Decl. ¶ 10 (Docket No. 80-2).) Accordingly, the court
4 preliminarily finds that the proposed incentive award does not
5 render plaintiff an inadequate representative of the class.

6 In addition, the named plaintiff and her counsel seem
7 to have vigorously prosecuted the action on behalf of the class.
8 "Although there are no fixed standards by which 'vigor' can be
9 assayed, considerations include competency of counsel and, in the
10 context of a settlement-only class, an assessment of the
11 rationale for not pursuing further litigation." Hanlon, 150 F.3d
12 at 1021. The parties conducted a significant amount of
13 discovery, participated in two full mediations, and fully briefed
14 motions and cross-motions for summary judgment before deciding to
15 settle. Plaintiff's counsel was therefore informed about the
16 strengths and weaknesses of this case when she decided to accept
17 the terms of the mediator's proposed settlement agreement.

18 (Pl.'s Mot. at 8.)

19 The court also finds no reason to doubt that
20 plaintiff's counsel is qualified to serve as class counsel and
21 assess the value of the settlement. Plaintiff's counsel, Robin
22 Workman, states that she and the Workman Law Firm have "extensive
23 experience in wage and hour class action litigation." (Workman
24 Decl. ¶ 31 (Docket No. 80-3).) Plaintiff's counsel specializes
25 in employment law, particularly wage and hour enforcement on a
26 class action basis, and has been lead counsel on a number of such
27 cases. (Id.) Accordingly, the court concludes that the absence
28 of conflicts of interest and the vigor of counsel's

1 representation satisfy Rule 23(a)'s adequacy assessment for the
2 purpose of preliminary approval.

3 2. Rule 23(b)

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

11 "Because Rule 23(a)(3) already considers commonality,
12 the focus of the Rule 23(b)(3) predominance inquiry is on the
13 balance between individual and common issues." Murillo v. Pac.
14 Gas & Elec. Co., 266 F.R.D. 468, 476 (E.D. Cal. 2010) (citing
15 Hanlon, 150 F.3d at 1022). The class members' contentions appear
16 to be similar, if not identical. Although there are differences
17 in the total number of weeks worked by class members and whether
18 they were employed as sales representatives or sales managers,
19 there is no indication that those variations are "sufficiently
20 substantive to predominate over the shared claims." See id.
21 Accordingly, the court finds that common questions of law and
22 fact predominate over the class members' claims.

23 Rule 23(b)(3) also sets forth four non-exhaustive
24 factors to consider in determining whether "a class action is
25 superior to other available methods for fairly and efficiently
26 adjudicating the controversy":

27 (A) the class members' interests in individually
28 controlling the prosecution or defense of separate
actions; (B) the extent and nature of any litigation

1 concerning the controversy already begun by or against
2 class members; (C) the desirability or undesirability
3 of concentrating the litigation of the claims in the
4 particular forum; and (D) the likely difficulties in
5 managing a class action.

6 Fed. R. Civ. P. 23(b) (3). The parties settled this action prior
7 to certification, making factors (C) and (D) inapplicable. See
8 Murillo, 266 F.R.D. at 477 (citing Windsor, 521 U.S. at 620).

9 The damage calculation experts hired by plaintiff
10 estimated that the range of potential recovery for this case
11 ranges anywhere from \$2.5 million to \$11.7 million--predicting
12 plaintiff's wage statement claim is worth between \$1 million and
13 \$2.4 million, the standard roundtrip commute mileage claim \$1.5
14 million, and the reimbursement rate claim between \$0 and \$7.8
15 million. (Pl.'s Mot. at 13.) Class members might have an
16 interest in individually controlling prosecution given that the
17 \$2.7 million settlement is on the lower end of this range.
18 However, defendant strongly disputes the worth of plaintiff's
19 reimbursement rate claim and, as will be discussed below, there
20 are significant risks associated with going to trial in this
21 case. Moreover, the costs of individually pursuing this
22 litigation would be significant. As a result, class members'
23 interest in pursuing individual suits is likely low.

24 The court is also unaware of any concurrent litigation
25 already begun by class members regarding the wage statements and
26 reimbursements provided by defendant. Objectors at the fairness
27 hearing may reveal otherwise. See Alberto, 252 F.R.D. at 664.
28 At this stage, the class action device appears to be the superior
method for adjudicating this controversy.

1 3. Rule 23(c)(2) Notice Requirements

2 If the court certifies a class under Rule 23(b)(3), it
3 "must direct to class members the best notice that is practicable
4 under the circumstances, including individual notice to all
5 members who can be identified through reasonable effort." Fed.
6 R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and
7 content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D.
8 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,
9 417 U.S. 156, 172-77 (1974)). Although that notice must be
10 "reasonably certain to inform the absent members of the plaintiff
11 class," actual notice is not required. Silber v. Mabon, 18 F.3d
12 1449, 1454 (9th Cir. 1994) (citation omitted).

13 The settlement agreement provides that the claims
14 administrator, ILYM, will provide notice to the class via bulk
15 first class mail. (Settlement Agreement ¶ 9.2.4.) Defendant
16 will provide the claims administrator with each class member's
17 name, last known address, social security number, and number of
18 weeks worked. (Id. ¶ 9.2.1.) The claims administrator will
19 update the addresses using the National Change of Address
20 Database and then mail to each class member the class notice, a
21 claim form, and a claim form return envelope with prepaid
22 postage. If notices are returned as undeliverable, the claims
23 administrator will perform a skip trace procedure and, if a new
24 address is secured, re-mail the notice. (Id. ¶ 9.2.5.) Fifteen
25 days before the claims deadline, the claims administrator will
26 also mail a reminder postcard to those class members who have not
27 yet responded. (Id. ¶ 10.1.)

28 The notice explains the proceedings; defines the scope

1 of the class; informs the class member of the claim form
2 requirement and the binding effect of the class action; describes
3 the procedure for opting out and objecting; and provides the time
4 and date of the fairness hearing. (Settlement Agreement Ex. B,
5 Notice.) The court is concerned, however, with the text box on
6 page two of the notice entitled, "YOUR LEGAL RIGHTS AND OPTIONS
7 IN THIS LAWSUIT." The box summarizes two options: (1) do nothing
8 or (2) ask to be excluded. (Id. at 2.) The "do nothing" box
9 states: "By doing nothing, you remain a member of the Settlement
10 Class. If the court grants final approval of the Settlement, you
11 will be entitled to receive a settlement check. At the same
12 time, you give up the rights to sue ADT for certain claims under
13 California law." (Id.) The court finds this summary to be
14 misleading because class members will not receive a settlement
15 check if they "do nothing." Once this language is clarified to
16 make clear that class members must submit a claim form in order
17 to receive a settlement check, the content of the notice will
18 satisfy Rule 23(c)(2)(B). See Churchill Vill., L.L.C. v. Gen.
19 Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory
20 if it 'generally describes the terms of the settlement in
21 sufficient detail to alert those with adverse viewpoints to
22 investigate and to come forward and be heard.'" (quoting Mendoza
23 v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980)).

24 The court is also satisfied with the claim form, which
25 reports the number of weeks worked by the class member during the
26 class period, based on defendant's records, and provides an
27 estimated settlement payment amount. (Settlement Agreement Ex. A
28 at 1.) Class members who want to make a claim for a different

1 settlement sum based on a different number of weeks worked may
2 set forth the information he or she believes correct in the claim
3 form, explain the basis for such belief, and submit supporting
4 written documentation within seven days of the claim deadline.
5 (Id. at 2.)

6 The court is satisfied that this system is reasonably
7 calculated to provide notice to class members and is the best
8 form of notice available under the circumstances.

9 B. Preliminary Settlement Approval

10 After determining that the proposed class satisfies the
11 requirements of Rule 23, the court must determine whether the
12 terms of the parties' settlement appear fair, adequate, and
13 reasonable. See Fed. R. Civ. P. 23(e)(2); Hanlon, 150 F.3d at
14 1026. This process requires the court to "balance a number of
15 factors," including:

16 the strength of the plaintiff's case; the risk,
17 expense, complexity, and likely duration of further
18 litigation; the risk of maintaining class action
19 status throughout the trial; the amount offered in
20 settlement; the extent of discovery completed and the
21 stage of the proceedings; the experience and views of
22 counsel; the presence of a governmental participant;
23 and the reaction of the class members to the proposed
24 settlement.

25 Hanlon, 150 F.3d at 1026. Many of these factors cannot be
26 considered until the final fairness hearing, so the court need
27 only conduct a preliminary review at this time to resolve any
28 "glaring deficiencies" in the settlement agreement before
authorizing notice to class members. Ontiveros, 2014 WL 3057506,
at *12 (citing Murillo, 266 F.R.D. at 478).

1 At the preliminary stage, “the court need only
2 ’determine whether the proposed settlement is within the range of
3 possible approval.’” Murillo, 266 F.R.D. at 479 (quoting
4 Gautreaux v. Pierce, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).
5 This generally requires consideration of “whether the proposed
6 settlement discloses grounds to doubt its fairness or other
7 obvious deficiencies, such as unduly preferential treatment of
8 class representatives or segments of the class, or excessive
9 compensation of attorneys.” Id. (quoting W. v. Circle K Stores,
10 Inc., Civ. No. 04-0438 WBS GGH, 2006 WL 1652598, at *11-12 (E.D.
11 Cal. June 13, 2006)).

12 1. Negotiation of the Settlement Agreement

13 Courts often begin by examining the process that led to
14 the settlement’s terms to ensure that the agreement is “the
15 result of vigorous, arms-length bargaining.” See, e.g., West,
16 2006 WL 1652598, at *11-12; In re Tableware Antitrust Litig., 484
17 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (“[P]reliminary approval
18 of a settlement has both a procedural and a substantive
19 component.”).

20 Plaintiff’s counsel states that the settlement was
21 reached after formal and informal discovery, plaintiff’s own
22 independent investigation and evaluation, extensive motions
23 briefing, and two mediations. (Workman Decl. ¶ 21.) She
24 declares that, in ultimately deciding to accept the mediator’s
25 proposal, she took into account the uncertain outcome and risks
26 of litigation and the uncertainty associated with class
27 certification. (Id.); see La Fleur v. Med. Mgmt. Int’l, Inc.,
28 Civ. No. 5:13-00398, 2014 WL 2967475, at *4 (N.D. Cal. June 25,

1 2014) (“Settlements reached with the help of a mediator are
2 likely non-collusive.”). In light of these considerations, the
3 court finds no reason to doubt the parties’ representations that
4 the settlement was the result of vigorous, arms-length
5 bargaining.

6 2. Amount Recovered and Distribution

7 In determining whether a settlement agreement is
8 substantively fair to the class, the court must balance the value
9 of expected recovery against the value of the settlement offer.
10 See Tableware, 484 F. Supp. 2d at 1080. This inquiry may involve
11 consideration of the uncertainty class members would face if the
12 case were litigated to trial. See Ontiveros, 2014 WL 3057506, at
13 *14.

14 As discussed above, the damage calculation experts
15 hired by plaintiff estimated that the range of potential recovery
16 for this case is between \$2.5 million and \$11.7 million. (Pl.’s
17 Mot. at 13.) The \$2.7 million settlement is within, but on the
18 lower end, of this estimated value range. Further, the court
19 notes that the settlement agreement requires class members to
20 take the affirmative step of opting in to receive payment and
21 opting out if they do not wish to be part of the settlement
22 class. (Id. ¶¶ 9.3.1.3, 9.6.) Class members who do not request
23 to be excluded will release defendant from their wage statement
24 and reimbursement claims. (Id.) Therefore, there is a risk that
25 some members of the class will opt into the judgment by default,
26 thus releasing defendant, but get no recovery simply because they
27 fail to timely return the claim form.

28 While the settlement amount is on the low-end of the

1 expected recovery range and the agreement contains a potentially
2 unfair opt-in/opt-out requirement, there are many uncertainties
3 associated with pursuing litigation that justify this recovery.
4 Defendant contends that it reimbursed class members for all
5 expenses incurred and plaintiff would not have been able to
6 certify its reimbursement claims. (Pl.'s Mot. at 14.) Further,
7 there were risks of significant delay if defendant challenged
8 plaintiff's motion for class certification or any final judgment
9 in favor of plaintiff. Defendant disagreed with this court's
10 October 6, 2015 Order granting plaintiff partial summary judgment
11 on her wage statement claim, as was evidenced by defendant's
12 unsuccessful motion for reconsideration and motion for
13 certification of the Order for interlocutory appeal, (Docket Nos.
14 48-49), and made clear it intended to appeal any final judgment
15 in plaintiff's favor. (Pl.'s Mot. at 14.)

16 In light of the uncertainties associated with pursuing
17 litigation, the court will grant preliminary approval to the
18 settlement because it is within the range of possible approval.
19 Murillo, 266 F.R.D. at 479 (quoting Gautreaux v. Pierce, 690 F.2d
20 616, 621 n.3 (7th Cir. 1982)).

21 3. Attorney's Fees

22 If a negotiated class action settlement includes an
23 award of attorney's fees, that fee award must be evaluated in the
24 overall context of the settlement. Knisley v. Network Assocs.,
25 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio, 291 F.R.D. at
26 455. The court "ha[s] an independent obligation to ensure that
27 the award, like the settlement itself, is reasonable, even if the
28 parties have already agreed to an amount." In re Bluetooth

1 Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011).

2 The settlement agreement provides that plaintiff's
3 counsel will apply to the court for a fee award of up to 33% of
4 the gross settlement amount, or \$891,000, for the 1,306 hours
5 spent on the case. (Settlement Agreement ¶ 5.1; Workman Decl.
6 ¶ 34.) Defendant agrees not to oppose plaintiff's petition for
7 the fee award so long as it does not exceed 33%. (Settlement
8 Agreement ¶ 5.1.) If the court does not approve, in whole or in
9 part, the fee award, it will not prevent the settlement agreement
10 from becoming effective or be grounds for termination. (Id.)

11 In deciding the attorney's fees motion, the court will
12 have the opportunity to assess whether the requested fee award is
13 reasonable, by multiplying a reasonable hourly rate by the number
14 of hours counsel reasonably expended. See Van Gerwen v. Guarantee
15 Mut. Life. Co., 214 F.3d 1041, 1045 (9th Cir. 2000). As part of
16 this lodestar calculation, the court may take into account
17 factors such as the "degree of success" or "results obtained" by
18 plaintiff's counsel. See Cunningham v. County of Los Angeles,
19 879 F.2d 481, 488 (9th Cir. 1988). If the court, in ruling on
20 the fee motion, finds that the amount of the settlement warrants
21 a fee award at a rate lower than what plaintiff's counsel
22 requests, then it will reduce the award accordingly. The court
23 will therefore not evaluate the fee award at length here in
24 considering whether the settlement is adequate.

25 IT IS THEREFORE ORDERED that plaintiff's motion for
26 preliminary certification of a conditional settlement class and
27 preliminary approval of the class action settlement be, and the
28 same hereby is, GRANTED.

1 IT IS FURTHER ORDERED that:

2 (1) The claims administrator shall notify class members
3 of the settlement in the manner specified under section nine of
4 the settlement agreement, with the slight adjustment to the text
5 of the notice discussed above;

6 (2) Class members who want to receive a settlement
7 payment under the settlement agreement must accurately complete
8 and deliver the claim form to the claims administrator no later
9 than thirty calendar days after the date the class notices are
10 mailed. Class members who want to make a claim for a different
11 settlement sum must set forth the information he or she believes
12 is correct in the claim form, explain the basis for such belief,
13 and submit supporting written documentation within seven days of
14 the claim deadline. Within five days of receiving the claim
15 form, the claims administrator will send a deficiency notice to
16 any class member whose claim form contains irregularities and
17 provide the class member with fifteen days to mail a written
18 response curing the deficiencies;

19 (3) Class members who want to object to the settlement
20 agreement must either deliver written objections to the claims
21 administrator postmarked no later than thirty calendar days after
22 the notice date or appear in person at the final fairness
23 hearing. The objection must include the objecting person's full
24 name, current address, all objections and reasons for the
25 objections, and any supporting papers. Any class member who
26 submits an objection remains eligible to submit a claim form and
27 receive monetary compensation;

28 (4) Class members who fail to object to the settlement

1 agreement in the manner specified above shall be deemed to have
2 waived their right to object to the settlement agreement and any
3 of its terms;

4 (5) Class members who want to be excluded from the
5 settlement must, within thirty days from the date class notices
6 are mailed, submit the request for exclusion form to the claims
7 administrator. Class members who opt out shall not receive any
8 settlement proceeds or be bound by any of the terms of the
9 settlement, including the release provisions;

10 (6) The Wage Statement Settlement Class is
11 provisionally certified as all employees working as sales
12 representatives for defendant from October 1, 2010 to the date
13 this Order is signed. The Vehicle Expense Reimbursement Class is
14 provisionally certified as all employees working as sales
15 representatives for defendant from October 1, 2010 to the date
16 this Order is signed and employees working as sales managers for
17 defendant from July 1, 2013 to the date this Order is signed;

18 (7) Plaintiff Shirley Garnett is conditionally
19 certified as the class representative to implement the parties'
20 settlement in accordance with the settlement agreement. The law
21 firm of Workman Law Firm, through Robin Workman and Aviva Roller,
22 is conditionally appointed as class counsel. Plaintiff and
23 Workman Law Firm must fairly and adequately protect the class's
24 interests;

25 (8) The parties agree that ILYM will serve as the
26 claims administrator;

27 (9) If the settlement agreement terminates for any
28 reason, the following will occur: (a) class certification will be

1 automatically vacated; (b) plaintiff will stop functioning as
2 class representative; and (c) this action will revert to its
3 previous status in all respects as it existed immediately before
4 the parties executed the settlement agreement;

5 (10) All discovery and pretrial proceedings and
6 deadlines are stayed and suspended until further notice from the
7 court, except for such actions as are necessary to implement the
8 settlement agreement and this Order;

9 (11) The fairness hearing is set for June 27, 2016 at
10 1:30 p.m., in Courtroom No. 5, to determine whether the
11 settlement agreement should be finally approved as fair,
12 reasonable, and adequate;

13 (12) Based on the date this Order is signed and the
14 date of the fairness hearing, the following are the certain
15 associated dates in this settlement:

16 (a) Defendant shall provide the claims
17 administrator the necessary contact information for class members
18 by May 2, 2016 and the claims administrator shall mail notice by
19 May 9, 2016;

20 (b) Class members shall file objections, requests
21 for exclusion, and claim forms by June 8, 2016;

22 (c) Pursuant to Local Rule 293, plaintiff shall
23 file a motion for attorney's fees no later than 28 days prior to
24 the final fairness hearing;

25 (13) The parties shall file briefs in support of the
26 final approval of the settlement no later than June 13, 2016.

27 Dated: April 18, 2016



28 **WILLIAM B. SHUBB**
UNITED STATES DISTRICT JUDGE
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