UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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DORCAS-COTHY KABASELE, KATIA ARRELLANO, ANGEL GONZALEZ, MINDY MIRANDA, SARYNA DE JESUS, TATIANA BRENAL, FLOR CRUZ, JULISSA PEREZ, ELISSA PADILLA, IAN LAMAR, CLAUDIA BENITEZ, BRITTNEY HUGHES, GEORGE MADDOX, VICTORIA HENKES, ALLEXANDRA TAN, DANIELLE QUAID, JERRICA LABIAN, RYAN GUFFEY, KIERSTEN WONG, BRITTANI HERENA, JANET SANCHEZ, BRITTANY SOMMERS, CHEYENNE LOPEZ, TALIA CASTENEDA, NOHELY LLAMAS, RHONDA PRICKETT, and DEBBIE HARRISON,[1]

Plaintiffs,

v.

ULTA SALON, COSMETICS & FRAGRANCE, INC.; and DOES 1-100, inclusive,

Defendants.

No. 2:21-cv-1639 WBS KJN

MEMORANDUM AND ORDER RE: PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND MOTION FOR ATTORNEYS' FEES, COSTS, AND ENHANCEMENT PAYMENTS

[1] Although the caption on the operative complaint does not state as such, plaintiffs assert claims both individually and on behalf of similarly situated Ulta employees.

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Plaintiffs Dorcas-Cothy Kabasele,[2] Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Jerrica Labian, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and Katia Arellano, individually and on behalf of similarly situated individuals, brought this putative class action against defendant Ulta Salon, Cosmetics, & Fragrance, Inc. ("Ulta"), alleging violations of California wage and hour laws. (See Fourth Am. Compl. ("FAC") (Docket No. 48).)

This is one of four actions against defendant Ulta covering similar class and PAGA claims. The other actions are Gonzalez v. Ulta Salon Cosmetics & Fragrance, Inc., No. 2:22-cv-00363 AB RAO (C.D. Cal.), a federal class and PAGA action; Arellano v. Ulta Salon, Cosmetics and Fragrance, Inc., No. 5:22-cv-00639 JGB KK (C.D. Cal.), a federal class action; and Arellano v. Ulta Salon, Cosmetics and Fragrance, Inc., No. CIVSB2209151 (San Bernardino Super. Ct.), a state PAGA action.

The settlement disposes of all four actions. All parties agreed to seek settlement approval only in this action; once the settlement receives final approval in this action and all class payments are distributed, counsel in the Gonzalez and Arellano actions (state and federal) will voluntarily dismiss

[2] The court is informed by plaintiff's counsel that the first named plaintiff, Dorcas-Cothy Kabasele, is deceased.

their cases. (See Settlement Agreement (Docket No. 49-5 at 24-59) ¶ 9.8.)

Before the court are plaintiffs' motion for final approval of class action settlement (Docket No. 49) and motion for attorneys' fees, costs, and enhancement payments (Docket No. 49-4). Defendant does not oppose the motions. (See Docket No. 50.)

The Ninth Circuit has declared a strong judicial policy favoring settlement of class actions. Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992); see also Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]") (citation omitted). Rule 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e).

"Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex Litig. (Third), § 30.41 (1995)). This court satisfied step one by granting plaintiffs' unopposed motion for preliminary approval of class action settlement on July 25, 2023. (Order Granting Prelim. Approval (Docket No. 47).) Now, following notice to the class members, the court will consider whether final approval is merited by evaluating: (1) the treatment of this litigation as a

class action and (2) the terms of the settlement. See Diaz v. Tr. Territory of Pac. Islands, 876 F.2d 1401, 1408 (9th Cir. 1989).

I. Class Certification

The putative class consists of all current and former hourly-paid or non-exempt employees who worked for defendant Ulta within California between October 12, 2019 and November 8, 2022. (Settlement Agreement ¶ 1.6.)

To be certified, the putative class must satisfy the requirements of Federal Rules of Civil Procedure 23(a) and 23(b). Leyva v. Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir. 2013).

A. Rule 23(a)

Rule 23(a) restricts class actions to cases where: "(1) the class is so numerous that joinder of all members is impracticable [numerosity]; (2) there are questions of law or fact common to the class [commonality]; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [typicality]; and (4) the representative parties will fairly and adequately protect the interests of the class [adequacy of representation]." See Fed. R. Civ. P. 23(a).

In the court's order granting preliminary approval of the settlement, the court found that the putative class satisfied the Rule 23(a) requirements. (See Order Granting Prelim. Approval at 6-12.) The court is unaware of any changes that would affect its conclusion that the putative class satisfies the Rule 23(a) requirements, and the parties have not indicated that they are aware of any such developments. The court therefore finds that the class definition proposed by plaintiffs meets the

requirements of Rule 23(a).

B. Rule 23(b)

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

In its order granting preliminary approval of the settlement, the court found that both the predominance and superiority prerequisites of Rule 23(b)(3) were satisfied. (Order Granting Prelim. Approval at 12-14.) The court is unaware of any changes that would affect its conclusion that Rule 23(b)(3) is satisfied. Because the settlement class satisfies both Rule 23(a) and 23(b)(3), the court will grant final class certification of this action.

C. Rule 23(c)(2) Notice Requirements

If the court certifies a class under Rule 23(b)(3), it "must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(c)(2) governs both the form and content of a proposed notice. See Ravens v. Iftikar, 174 F.R.D. 651, 658 (N.D. Cal. 1997) (citing Eisen v. Carlisle & Jacquelin,

417 U.S. 156, 172–77 (1974)). Although that notice must be "reasonably certain to inform the absent members of the plaintiff class," actual notice is not required. Silber v. Mabon, 18 F.3d 1449, 1454 (9th Cir. 1994) (citation omitted).

The notice explains the proceedings, defines the scope of the class, and explains what the settlement provides and how much each class member can expect to receive in compensation. (See Notice of Class Action Settlement (Docket No. 49-2 at 7-12) at 1-5.) The notice further explains the opt-out procedure, the procedure for objecting to the settlement, and the date and location of the final approval hearing. (See id. at 5-6.) The content of the notice therefore satisfies Rule 23(c)(2)(B). See Fed. R. Civ. P. 23(c)(2)(B); Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'") (quoting Mendoza v. Tucson Sch. Dist. No. 1, 623 F.2d 1338, 1352 (9th Cir. 1980)).

The parties selected Simpluris, Inc. to serve as the Settlement Administrator. (See Settlement Agreement ¶ 1.30.) Defendant timely provided Simpluris with the class contact information and data, which included the name, last known address, Social Security Number, email address, telephone number, and pertinent employment information for each class member. (See Docket No. 49-2 ¶ 6.) The class list contained 18,705 members. (Id. ¶ 6.) The Settlement Administrator updated the mailing addresses using the National Change of Address Database maintained by the U.S. Postal Service. (Id. ¶ 7.)

The Settlement Administrator delivered notice of the settlement via mail on August 18, 2023. (Id. ¶ 8.) 880 notices were returned as undeliverable. (Id. ¶ 9.) For those without a forwarding address, the Settlement Administrator performed a skip trace address search to locate updated addresses. (Id.) Of the 880 notices returned as undeliverable, 726 notices were remailed to new addresses. Following these efforts, a total of 154 notices were ultimately undeliverable by mail. (Id.) Of those 154 class members, the Settlement Administrator obtained email addresses for 106 individuals and complete notice via email. (Id.) This constitutes a 99.74% successful notice rate. (Id.) The Settlement Administrator received five requests for exclusion and zero objections. (Id. ¶¶ 11-12.)

The court appreciates the thorough efforts taken by the Settlement Administrator to effectuate notice and is satisfied that the notice procedure was "reasonably calculated, under all the circumstances," to apprise all class members of the proposed settlement. See Roes, 1-2 v. SFBSC Mgmt., LLC, 944 F.3d 1035, 1045-46 (9th Cir. 2019).

II. Final Settlement Approval

Having determined that class treatment is warranted, the court must now address whether the terms of the parties' settlement appear fair, adequate, and reasonable. See Fed. R. Civ. P. 23(e)(2). To determine the fairness, adequacy, and reasonableness of the agreement, Rule 23(e) requires the court to consider four factors: "(1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the

class is adequate; and (4) the proposal treats class members equitably relative to each other." Id. The Ninth Circuit has also identified eight additional factors the court may consider, many of which overlap substantially with Rule 23(e)'s four factors:

> The strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in 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.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998).[3]

A. Adequate Representation

The court must first consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). This analysis is

[3] Because claims under PAGA are "a type of qui tam action" in which an employee brings a claim as an agent or proxy of the state's labor law enforcement agencies, the court must also "review and approve" settlement of plaintiff's and other class members' PAGA claims along with their class claims. See Cal. Lab. Code § 2669(k)(2); Sakkab v. Luxottica Retail N. Am., Inc., 803 F.3d 425, 435-36 (9th Cir. 2015).

Though "PAGA does not establish a standard for evaluating PAGA settlements," Rodriguez v. RCO Reforesting, Inc., No. 2:16-CV-2523 WBS DMC, 2019 WL 331159, at *4 (E.D. Cal. Jan. 25, 2019) (citing Smith v. H.F.D. No. 55, Inc., No. 2:15-cv-01293 KJM KJN, 2018 WL 1899912, at *2 (E.D. Cal. Apr. 20, 2018)), a number of district courts have applied the eight Hanlon factors, listed above, to evaluate PAGA settlements. See, e.g., Smith, 2018 WL 1899912, at *2; Ramirez v. Benito Valley Farms, LLC, No. 16-cv-04708 LHK, 2017 WL 3670794, at *3 (N.D. Cal. Aug. 25, 2017); O'Connor v. Uber Techs., 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016). "Many of these factors are not unique to class action lawsuits and bear on whether a settlement is fair and has been reached through an adequate adversarial process." See Ramirez, 2017 WL 3670794, at *3. Thus, the court finds that these factors will also govern its review of the PAGA settlement. See id.

"redundant of the requirements of Rule 23(a)(4) . . . ." Hudson v. Libre Tech., Inc., No. 3:18-cv-1371 GPC KSC, 2020 WL 2467060, at *5 (S.D. Cal. May 13, 2020) (quoting 4 Newberg on Class Actions § 13:48 (5th ed.)); see also In re GSE Bonds Antitr. Litig., 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019) (noting similarity of inquiries under Rule 23(a)(4) and Rule 23(e)(2)(A)).

Because the Court has found that the proposed class satisfies Rule 23(a)(4) for purposes of class certification, the adequacy factor under Rule 23(e)(2)(A) is also met. See Hudson, 2020 WL 2467060, at *5.

B. Negotiation of the Settlement Agreement

Prior to settlement negotiations, counsel engaged in thorough investigation of the claims and informal discovery, including securing employee records and policy documents, obtaining declarations from multiple plaintiffs, and retaining an expert to analyze the documents provided by defendant. (See Decl. of Robert J. Wasserman ("Wasserman Decl.") (Docket No. 49-5) ¶ 7.)

On September 8, 2022, the parties participated in a full-day private medication with an experienced wage and hour class action mediator. (See id. ¶ 8.) The parties were unable to reach a settlement on that day, but continued negotiations over the next two weeks. (Id. ¶ 9.) The parties accepted a mediator's proposal on September 22, 2022. (Id.) The parties spent several months negotiating the final terms of the Settlement Agreement, executing the agreement on January 18, 2023. (Id. ¶ 10.) Counsel represents that that the settlement

negotiations were adversarial and conducted at arms' length. (Id. ¶ 11.)

Given that the settlement reached was the product of arms-length bargaining following extensive informal discovery and with the help of an experienced mediator, this factor weighs in favor of final approval. See La Fleur v. Med. Mgmt. Int'l, Inc., No. 5:13-cv-00398, 2014 WL 2967475, at *4 (N.D. Cal. June 25, 2014) ("Settlements reached with the help of a mediator are likely non-collusive."). The court is satisfied that the outcome of the negotiations was not infected by counsel's pursuit of their own self-interests. See In re Apple Inc. Device Performance Litig., 50 F.4th 769, 782 (9th Cir. 2022).

C. Adequate Relief

In determining whether a settlement agreement provides adequate relief for the class, the court must "take into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any [other] agreement[s]" made in connection with the proposal. See Fed. R. Civ. P. 23(e)(2)(C); Baker v. SeaWorld Entm't, Inc., No. 14-cv-02129-MMA-AGS, 2020 WL 4260712, at *6-8 (S.D. Cal. Jul. 24, 2020).

The court notes that, in evaluating whether the settlement provides adequate relief, it must consider several of the same factors outlined in Hanlon, including the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class

action status throughout the trial; and the amount offered in settlement. See Hanlon, 150 F.3d at 1026.

In determining whether a settlement agreement is 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 1078, 1080 (N.D. Cal. 2007). When a settlement was reached prior to class certification, it is subject to heightened scrutiny for purposes of final approval. See In re Apple Inc., 50 F.4th at 782. The recommendations of plaintiffs' counsel will not be given a presumption of reasonableness, but rather will be subject to close review. See id. at 782-83. The court will particularly scrutinize "any subtle signs that class counsel have allowed pursuit of their own self-interests to infect the negotiations." See id. at 782 (quoting Roes, 1-2 v. SFBSC Mgmt., LLC, 944 F.3d 1035, 1043 (9th Cir. 2019)).

The Settlement Agreement provides for a gross settlement amount of $1,500,000, which covers all four actions and includes the following: (1) $5,000 incentive awards for the lead plaintiffs and $500 for each remaining named plaintiff, for a total of $22,000 in plaintiff incentive awards;[4] (2) maximum attorneys' fees of $500,000, or 33.33% of the gross settlement amount, plus reasonable documented costs; (3) settlement administration costs of approximately $65,000; and (4) $50,000 for PAGA penalties, of which 75% (i.e., $37,500) will be

[4] The incentive awards originally totaled $27,000, but this figure has been reduced by the $5,000 that was provided for Ms. Kabasele's incentive award, which will be divided among the class members, as explained below.

distributed to the Labor and Workforce Development Agency ("LWDA") and the remaining 25% will be distributed to individual aggrieved employees. (See Settlement Agreement ¶¶ 1.5, 1.13, 1.16, 1.21, 1.31.) The remaining net settlement amount will be distributed to the class members and aggrieved employees based on their number of pay periods. (See id. ¶¶ 1.18, 6.1-6.3.)

Plaintiffs estimate that the claims are worth up to $5,327,023.36. (See Wasserman Decl. ¶ 45.) The portion of the gross settlement amount allocated to class claims -- $1,450,000 -- constitutes approximately 27.22% of the $5,327,023.36 maximum valuation. This amount is comfortably within the range of percentage recoveries that California courts have found to be reasonable. See Cavazos v. Salas Concrete, Inc., No. 1:19-cv-00062 DAD EPG, 2022 WL 2918361, at *6 (E.D. Cal. July 25, 2022) (collecting cases).

Plaintiffs faced numerous hurdles in the litigation, including proving all elements of the claims, obtaining and maintaining class certification, establishing liability, and the costliness of litigation on these issues. Investigation uncovered specific factual weaknesses in plaintiffs' case, including defendant's use of facially valid timekeeping policies and sophisticated timekeeping software; very low rates of unpaid wages and sick pay based on analyzed payroll records; high rates of meal and rest break premiums actually paid by defendant; facially valid policies for reimbursement of business expenses; significant reimbursements given to class members for cell phone usage; and large amounts of waiting time penalties paid to class members. (See Wasserman Decl. ¶¶ 17-41.) Plaintiffs' counsel

represents that, given the strength of plaintiffs' claims and defendant's potential exposure, the settlement and resulting distribution provides a strong result for the class. (See id. ¶ 52.)

In light of the risks associated with further litigation and the relative strength of defendant's arguments, the court finds that the value of the settlement counsels in favor of granting final approval. The court further finds the method of processing class member claims to be adequate. Each class member's individual share of the settlement is proportional to the number of pay periods worked for defendant during the time period covered by the Settlement Agreement. The court is also satisfied that counsel's requested fees are reasonable and support approval of the settlement, which it will address in greater detail below.

D. Equitable Treatment of Class Members

Finally, the court must consider whether the Settlement Agreement "treats class members equitably relative to each other." See Fed. R. Civ. P. 23(e)(2)(D). In doing so, the court determines whether the settlement "improperly grant[s] preferential treatment to class representatives or segments of the class." Hudson, 2020 WL 2467060, at *9 (quoting Tableware, 484 F. Supp. at 1079.

Here, the Settlement Agreement does not improperly discriminate between any segments of the class, as all class members are entitled to monetary relief based on the number of pay periods they spent working for defendants. (See Settlement Agreement ¶ 6.1.)

While the Settlement Agreement allows plaintiffs to seek incentive payments, plaintiffs have submitted evidence documenting their time and effort spent on this case, which, as discussed further below, has satisfied the court that their additional compensation above other class members is justified. See Hudson, 2020 WL 2467060, at *9. The court therefore finds that the settlement treats class members equitably. See Fed. R. Civ. P. 23(e)(D).

E. Remaining *Hanlon* Factors

In addition to the factors already considered as part of the court's analysis under Rule 23(e)(A)-(D), the court must also examine "the extent of the discovery completed . . ., the presence of government participation, and the reaction of class members to the proposed settlement." Hanlon, 150 F.3d at 1026.

As explained above, counsel engaged in thorough informal discovery. This factor thus weighs in favor of final approval of the settlement.

The seventh Hanlon factor, pertaining to government participation, also weighs in favor of approval. See Hanlon, 150 F.3d at 1026. Under PAGA, "[t]he proposed settlement [must be] submitted to the [LWDA] at the same time that it is submitted to the court." Cal. Lab. Code § 2669(k)(2). As of the date of this order, the LWDA has not sought to intervene or otherwise objected to the PAGA settlement. This factor therefore weighs in favor of final approval of the settlement.

The eighth Hanlon factor, the reaction of the class members to the proposed settlement, also weighs in favor of final approval, as only five of the 18,705 class members requested to

be excluded and no class members objected. See Hanlon, 150 F.3d at 1026.

In sum, the four factors that the court must evaluate under Rule 23(e) and the eight Hanlon factors, taken as a whole, weigh in favor of approving the settlement. The court will therefore grant final approval of the Settlement Agreement.

III. Attorneys' Fees

Federal Rule of Civil Procedure 23(h) provides, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). If a negotiated class action settlement includes an award of attorneys' fees, that fee award must be evaluated in the overall context of the settlement. Knisley v. Network Assocs., 312 F.3d 1123, 1126 (9th Cir. 2002); Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 455 (E.D. Cal. 2013) (England, J.). The court "ha[s] an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011). "Under the 'common fund' doctrine, 'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable [attorneys'] fee from the fund as a whole.'" Staton v. Boeing Co., 327 F.3d 938, 969 (9th Cir. 2003) (quoting Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980)). In common fund cases, the district court has discretion to determine the amount of attorneys' fees to be drawn from the fund by employing either the percentage method or the lodestar

method. Id. The court may also use one method as a "cross-check[ ]" upon the other method. See Bluetooth Headset, 654 F.3d at 944.

As explained above, the settlement agreement appears to provide adequate recovery for the class members. Further, the payments will be quickly available to class members without the delay associated with further litigation.

Like other complex employment class actions, this case presented both counsel and the class with a risk of no recovery at all, as already discussed above. Plaintiffs' counsel took on this matter on a contingency basis. (See Wasserman Decl. ¶ 64.) The nature of contingency work inherently carries risks that counsel will sometimes recovers very little to nothing at all, even for cases that may be meritorious. See Kimbo v. MXD Group, Inc., No. 2:19-cv-00166 WBS KNJ, 2021 WL 492493, at *7 (E.D. Cal. Feb. 10, 2021). Where counsel do succeed in vindicating statutory and employment rights on behalf of a class of employees, they depend on recovering a reasonable percentage-of-the-fund fee award to enable them to take on similar risks in future cases. See id. Plaintiffs' counsel argues that, in light of the result obtained and substantial risk taken in this case, a $500,000 fee constituting 33.33% of the fund, as requested here, is reasonable.

The Ninth Circuit has established 25% of the fund as the "benchmark" award that should be given in common fund cases. Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990). As this court has explained, "a review of California cases . . . reveals that courts usually award

attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fun[d] under $10 million." Watson v. Tennant Co., No. 2:18-cv-02462 WBS DB, 2020 WL 5502318, at *7 (E.D. Cal. Sep. 11, 2020) (awarding 33.33% of settlement fund); see also Osegueda v. N. Cal. Inalliance, No. 18-cv-00835 WBS EFB, 2020 WL 4194055, at *16 (E.D. Cal. July 21, 2020) (same). Given that the requested fee is in line with the typical practice in the Ninth Circuit and in this district, the court agrees that plaintiffs' counsel's requested percentage of the common fund is reasonable.

"Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002).

Here, a lodestar cross-check confirms the reasonableness of the requested award. Counsel represent that they have dedicated 738.6 hours of work to these cases. (See Wasserman Decl. ¶ 72.) Counsel states that their customary hourly rates in class actions range from $675 to $997. (See id. ¶ 70; Docket No. 49-6 ¶¶ 17, 19; Docket No. 49-7 ¶ 13.) The firms specialize in wage and hour matters and class action cases, and counsel represents that comparable hourly rates have been approved by multiple federal and state courts in California. (See Wasserman Decl. ¶¶ 65, 69.) For purposes of the lodestar calculation, the court will apply the rate at the lower end of the range provided by counsel. Based on 738.6 hours billed at an hourly rate of $675, the lodestar figure is $498,555. This figure is nearly identical to the $500,000 award requested, with

a multiplier of 1.003, confirming the reasonableness of the requested award. Cf. Vizcaino, 290 F.3d at 1051 (affirming fee award with lodestar cross-check multiplier of 3.65).

Accordingly, the court finds the requested fees to be reasonable and will grant counsel's motion for attorneys' fees.

IV. Costs

"There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." In re Heritage Bond Litig., No. 02-cv-1475, 2005 WL 1594403, at *23 (C.D. Cal. June 10, 2005). Here, the parties agreed that plaintiffs' counsel shall be entitled to recover reasonable, documented litigation costs. (See Settlement Agreement ¶ 1.5.) Counsel's litigation expenses and costs total $24,667.33, though they only seek $20,000. (See Wasserman Decl. ¶ 78.) These expenses include copying and mailing expenses, filing fees, mediation fees, expert fees, and travel expenses. (See Docket No. 49-5 at 103-05; Docket No. 49-6 at 17-18; Docket No. 49-7 at 11.) The court finds these are reasonable litigation expenses. Therefore, the court will grant class counsel's request for costs in the amount of $20,000.

V. Representative Service Award

"Incentive awards are fairly typical in class action cases." Rodriguez, 563 F.3d at 958. "[They] are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Id. at 958-

59.

Nevertheless, the Ninth Circuit has cautioned that "district courts must be vigilant in scrutinizing all incentive awards to determine whether they destroy the adequacy of the class representatives . . . ." Radcliffe v. Experian Info. Solutions, Inc., 715 F.3d 1157, 1164 (9th Cir. 2013). In assessing the reasonableness of incentive payments, the court should consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions" and "the amount of time and effort the plaintiff expended in pursuing the litigation." Staton, 327 F.3d at 977 (citation omitted). The court must balance "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." Id.

In the Ninth Circuit, an incentive award of $5,000 is presumptively reasonable. Davis v. Brown Shoe Co., Inc., No. 1:13-cv-01211 LJO BAM, 2015 WL 6697929, at *11 (E.D. Cal. Nov. 3, 2015) (citing Harris v. Vector Marketing Corp., No. 08-cv-5198 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012) (collecting cases)).

Plaintiffs seek $5,000 incentive awards for the two lead plaintiffs, Katia Arellano and Angel Gonzalez, and $500 for each remaining named plaintiff. The efforts of the plaintiffs included interviewing and selecting counsel, providing documents to counsel, providing statements to counsel, reviewing documents and discovery responses, participating in mediation, and reviewing the settlement agreement. (See Docket Nos. 49-8

through 49-31.) In light of plaintiffs' efforts and the risks incurred in bringing this action, the court finds the requested incentive awards to be reasonable.

The settlement originally provided a $5,000 incentive award for Ms. Kabasele. However, in light of Ms. Kabasele's death, the court orders that her incentive award remain part of the net settlement funds, to be distributed to the class members and aggrieved employees in accordance with the terms of the settlement. At oral argument, counsel for both sides consented to this arrangement. The court also considered giving the incentive award to Ms. Kabasele's heirs or dividing it among the other named plaintiffs, but concluded that distributing it among the entire class was the most beneficial for the class.

VI. Conclusion

Based on the foregoing, the court will grant final certification of the settlement class and will approve the settlement set forth in the Settlement Agreement as fair, reasonable, and adequate. The Settlement Agreement shall be binding upon all participating class members who did not exclude themselves.

IT IS THEREFORE ORDERED that plaintiffs' unopposed motion for final approval of the parties' class action settlement (Docket No. 49) and motion for attorneys' fees, costs, and enhancement payments (Docket No. 49-4) be, and the same hereby are, GRANTED.

IT IS FURTHER ORDERED THAT:

(1) Solely for the purpose of this settlement, and pursuant to Federal Rule of Civil Procedure 23, the court hereby

certifies the following class: all current and former hourly-paid or non-exempt employees who worked for defendant Ulta within California between October 12, 2019 and November 8, 2022.

(2) The court appoints Angel Gonzalez, Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Jerrica Labian, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, Debbie Harrison, and Katia Arellano as class representatives and finds that they meet the requirements of Rule 23;

(3) The court appoints the law firms of Mayall Hurley, P.C., SW Employment Law Group, APC, and Lavi & Ebrahimian, LLP, as class counsel and finds that they meet the requirements of Rule 23;

(4) The settlement agreement's plan for class notice satisfies the requirements of due process and Rule 23. The plan is approved and adopted. The notice to the class complies with Rule 23(c)(2) and Rule 23(e) and is approved and adopted;

(5) The court finds that the parties and their counsel took appropriate efforts to locate and inform all class members of the settlement. Five employees have requested to be excluded from the class. Given that no class member filed an objection to the settlement, the court finds that no additional notice to the class is necessary;

(6) As of the date of the entry of this order, plaintiffs and all class members who have not timely opted out of

this settlement hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged defendants of and from any and all settled claims, pursuant to the release provisions stated in the parties' settlement agreement;

(7) Plaintiffs' counsel is entitled to fees in the amount of $500,000, and litigation costs in the amount of $20,000;

(8) Simpluris, Inc. is entitled to administration costs in the amount of $65,000;

(9) Plaintiffs Katia Arellano and Angel Gonzalez are entitled to incentive awards in the amount of $5,000, and plaintiffs Mindy Miranda, Saryna De Jesus, Tatiana Brenal, Flor Cruz, Julissa Perez, Elissa Padilla, Ian Lamar, Claudia Benitez, Brittney Hughes, George Maddox, Victoria Henkes, Allexandra Tan, Danielle Quaid, Jerrica Labian, Ryan Guffey, Kiersten Wong, Brittani Herena, Janet Sanchez, Brittany Sommers, Cheyenne Lopez, Talia Casteneda, Nohely Llamas, Rhonda Prickett, and Debbie Harrison are entitled to incentive awards in the amount of $500;

(10) $37,500 from the gross settlement amount shall be paid to the California Labor and Workforce Development Agency in satisfaction of defendant's alleged penalties under the Private Attorneys General Act;

(11) The remaining settlement funds shall be paid to participating class members and aggrieved employees in accordance with the terms of the Settlement Agreement; and

(12) This action is dismissed with prejudice. However, without affecting the finality of this Order, the court shall

retain continuing jurisdiction over the interpretation, implementation, and enforcement of the Settlement Agreement with respect to all parties to this action and their counsel of record.

Dated: February 6, 2024

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE