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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENNETH P. WADE, et al.,	)	
	)	
Plaintiff(s),	)	No. C10-2796 BZ
	)	
v.	)	
	)	<b>ORDER GRANTING</b>
MINATTA TRANSPORTATION CO.,	)	<b>ENHANCEMENT AWARD</b>
et al.,	)	
	)	
Defendant(s).	)	
_____	)	

Before the court is Plaintiffs' Motion for an Order Granting Enhancement Awards to the Class Representatives. The two class representatives each seek a \$10,000 incentive payment for their services to the class.

In the Ninth Circuit, a court has discretion to award a class representative a reasonable incentive payment. Staton v. Boeing Co., 327 F.3d 938, 977 (9th Cir. 2003; Mego Fin'l Corp. Sec. Litig. Nadler, 213 F.3d 454, 463 (9th Cir. 2000). Courts have approached such incentives cautiously because they tend to undermine the class representative's incentive to monitor sub-optimal or collusive settlements at the expense of other class members whose interests the named plaintiff has a

1 duty to protect. Staton, 327 F.3d at 975. Accordingly,  
2 courts generally consider the following criteria in  
3 determining whether to award an incentive payment: (1) the  
4 risk to the class representative in commencing suit, both  
5 financial and otherwise; (2) the notoriety and personal  
6 difficulties encountered by the class representative; (3) the  
7 amount of time and effort spent by the class representative;  
8 (4) the duration of litigation; and (5) the personal benefit  
9 (or lack thereof) enjoyed by the class representative as a  
10 result of the litigation. Id. at 977; Van Vranken v. Atlantic  
11 Richfield Co., 901 F.Supp. 294, 299 (N.D. Cal. 1995).

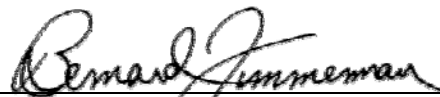
12 Plaintiffs' counsel argue without any factual support,  
13 that by assuming the role of class representatives, they  
14 subjected themselves to risks not faced by other class  
15 members, including the risk of retaliation. This is a risk  
16 inherent in any suit by an employee against an employer, and  
17 if the representatives or their counsel truly had a basis for  
18 concern, they could have taken steps to protect the  
19 representatives identities. This assertion is further  
20 undermined by the Court's experience that plaintiffs' counsel  
21 in FLSA suits frequently name a large number of class  
22 representatives. That said, the representatives have  
23 benefitted from agreeing to act as a class representative -  
24 they received skillful representation of experienced counsel  
25 which will yield them each a payment of over \$8,000. See  
26 Carter v. Anderson Merchandisers, LP, 2010 WL 144067 (C.D.  
27 Cal. 2010).

28 In their declarations, the representatives briefly state

1 that they were involved with the case by interacting with  
2 counsel, participating in conferences, reviewing documents,  
3 and attending the day-long mediation that resulted in the  
4 settlement. While the court does not minimize the import of  
5 this participation, the brief statement in their declarations,  
6 along with counsel's similarly vague description of their  
7 involvement, is insufficient to justify a \$10,000 incentive  
8 payment for each. They have not demonstrated that as class  
9 representatives they spent substantially more time and effort  
10 on the lawsuit than if they were suing only on their behalf.  
11 In fact, neither representative provided the court with an  
12 estimate of the hours he spent on this litigation.

13 There is however one factor which merits an enhancement.  
14 During oral argument, counsel for plaintiffs represented that  
15 the class representatives had assisted in trying to locate  
16 those class members whose notice was returned or who did not  
17 submit a claim. This resulted in two additional claims being  
18 made. This activity not only demonstrated their dedication to  
19 representing their fellow workers, it also went against their  
20 financial interests since they would have received a prorated  
21 share of the payments which went to the two additional  
22 claimants. For these reasons, **IT IS ORDERED** that each class  
23 representative receive an enhancement of \$1,000.

24 Dated: February 1, 2012



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Bernard Zimmerman  
United States Magistrate Judge