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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 JEFFREY TAYLOR, et al.,

8 Plaintiffs,

9 v.

10 THE BOARD OF TRUSTEES OF THE
11 LELAND STANFORD JUNIOR
UNIVERSITY,

12 Defendant.

Case No. 18-cv-05248-JSW

**ORDER GRANTING FINAL
APPROVAL OF SETTLEMENT AND
AWARD OF ATTORNEYS' FEES AND
COSTS, CLAIM ADMINISTRATION
FEE, AND CLASS REPRESENTATIVE
INCENTIVE AWARDS AND
ENTERING FINAL JUDGMENT**

Re: Dkt. No. 80

13 This matter comes before the Court on consideration of the motion for final approval of a
14 class and collective action settlement (the "Settlement") and award of attorneys' fees, costs, claim
15 administration fee, and class representative awards, filed by Plaintiffs Jeffrey Taylor, Crystal
16 Townley, and Sean Zirkle ("Plaintiffs"). Defendant does not oppose Plaintiffs' motion. The
17 Court has considered the parties' papers, relevant legal authority, the lack of objections to the
18 Settlement, and the record in this case. The Court has also considered the parties' arguments at
19 the fairness hearing held on April 15, 2022.

20 For the following reasons, the Court HEREBY GRANTS Plaintiff's motion for final
21 approval and GRANTS, IN PART, the awards of attorneys' fees, costs, claim administration fee,
22 and class representative awards.

23 **BACKGROUND**

24 On August 28, 2018, Plaintiffs filed the original complaint in this collective action and
25 class action asserting various claims under the Fair Labor Standards Act ("FLSA") and the
26 California Labor Code. (Dkt. No. 1.) On November 2, 2018, Defendant moved to dismiss or, in
27 the alternative, compel arbitration. (Dkt. No. 19.) Plaintiffs filed the first amended complaint on
28 November 14, 2018. (Dkt. No. 24.) Defendant again moved to dismiss or, in the alternative,

1 compel arbitration. (Dkt. No. 29.) The Court denied Defendant’s motion to dismiss on June 28,
2 2019. (Dkt. No. 42.) On April 24, 2020, the parties notified the Court that they had reached a
3 conditional settlement and requested all pending dates and deadlines be vacated. (Dkt. No. 51.)

4 On August 17, 2021, the Court preliminarily approved the Settlement Agreement. (Dkt.
5 No. 68.) The Court also preliminarily approved a class of Collective Action Members consisting
6 of all individuals employed by Stanford’s Department of Public Safety in the job classification of
7 community service officer, deputy sheriff, and sergeant who submitted a “Consent to Join
8 Collective Action” form by the date the Settlement Agreement was executed. The Court also
9 preliminarily approved a California Class of all individuals employed by Stanford’s Department of
10 Public Safety in the job classifications of community service officer, deputy sheriff, and sergeant
11 employed as of August 28, 2014, and through the date of preliminary approval (the “Class
12 Period”). Within the California Class is an “Investigator Subclass,” including all individuals
13 employed by Stanford’s Department of Public Safety as an Investigator as of August 28, 2014, and
14 through the date of preliminary approval.

15 Pursuant to the notice requirements in the Settlement Agreement and the Preliminary
16 Approval Order, the settlement administrator, ILYM, began to provide notice to the Settlement
17 Class Members on November 30, 2021. (Dkt. No. 80-3, Declaration of Makenna Snow (“Snow
18 Decl.”), ¶¶ 4-7.) On February 11, 2022, Plaintiffs filed their motion for final approval of the
19 Settlement and for attorneys’ fees, costs, and incentive awards. (Dkt. No. 80-1.) Plaintiffs filed a
20 supplemental declaration in support of the motion for final approval on April 13, 2022. (Dkt. No.
21 85, Supp. Decl. of David Mastagni (“Mastagni Supp. Decl.”).) Defendant filed a statement of
22 non-opposition on April 13, 2022. (Dkt. No. 84.)

23 The Court shall address additional facts as necessary in the analysis.

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ANALYSIS

A. The Court Grants the Motion for Final Approval.

1. Subject Matter Jurisdiction.

The Court has jurisdiction over this action pursuant to 28 U.S.C. section 1331 because Plaintiffs seek relief for violations of the FLSA. The Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. section 1367.

2. Certification of the Settlement Class and Collective Action.

For purposes of the settlement, the Court certifies a California class, pursuant to Federal Rule of Civil Procedure 23, comprising all individuals employed by Stanford’s Department of Public Safety in the job classifications of community service officer, deputy sheriff, and sergeant employed as of August 28, 2014, and through the date of preliminary approval. The Court also approves an “Investigator Subclass,” including all individuals employed by Stanford’s Department of Public Safety as an Investigator as of August 28, 2014, and through the date of preliminary approval. For settlement purposes, the Court certifies a collective action pursuant to Section 216(b) of the FLSA consisting of all individuals employed by Stanford’s Department of Public Safety in the job classification of community service officer, deputy sheriff, and sergeant who submitted a “Consent to Join Collective Action” form by the date the Settlement Agreement was executed.

3. Notice, Objections, and Requests for Exclusion.

“Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). Under Federal Rule of Civil Procedure 23(e), the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The notice must “clearly and concisely state in plain, easily understood language” the nature of the action, the class definition, and the class members’ right to exclude themselves from the class. Fed. R. Civ. P. 23(c)(2)(B). Although Rule 23 requires that reasonable efforts be made to reach all class members, it does not require that each

1 class member actually receive notice. *See Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994)
2 (noting that the standard for class notice is “best practicable” notice, not “actually received”
3 notice).

4 The Court finds that distribution of notice of the settlement directed to the Class Members
5 as set forth in the Settlement Agreement has been completed in conformity with the Preliminary
6 Approval Order. ILYM received a list of forty-nine individuals who are considered Settlement
7 Class Members. (Snow Decl. ¶ 5.) On November 30, 2021, ILYM mailed the notice packet via
8 U.S. first class mail to all forty-nine individuals on the class list. (*Id.* ¶ 7.) Two notice packets
9 were returned to ILYM. (*Id.* ¶ 8.) ILYM performed a computerized skip trace on the two returned
10 notice packets, obtained updated addresses, and re-mailed the notice packets. (*Id.*) As of
11 February 11, 2022, zero notice packets were considered undeliverable. (*Id.* ¶ 10.) As of February
12 11, 2022, ILYM has received one request for exclusion. (*Id.* ¶ 11.) ILYM has not received any
13 challenges to the workweeks or any objections to the settlement. (*Id.* ¶¶ 12-13; *see also* Supp.
14 Mastagni Decl., ¶¶ 2-3.) ILYM reports a total of forty-eight participating claimants, representing
15 97.96% of the forty-nine Settlement Class Members. (Snow Decl. ¶ 14.)

16 In light of these facts, the Court finds that the parties have sufficiently provided the best
17 practicable notice to the Settlement Class Members.

18 **4. The Relevant Factors Weigh in Favor of Concluding the Settlement is Fair,**
19 **Reasonable, and Adequate under Rule 23 and the FLSA.**

20 Federal Rule of Civil Procedure 23(e) permits a court to approve a settlement that will bind
21 a class “only on finding that it is fair, reasonable, and adequate after considering” a number of
22 factors. Fed. R. Civ. P. 23(e)(2); *see also Hanlon*, 150 F.3d at 1026. The factors the Court must
23 consider are whether:

24 the class representatives and class counsel have adequately
25 represented the class; the proposal was negotiated at arm’s length;
26 the relief provided for the class is adequate, taking into account: (i)
27 the costs, risks, and delay of trial and appeal; (ii) the effectiveness of
28 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 agreement required to be identified under Rule 23(e)(3);
and the proposal treats class members equitably relative to each
other.

1 Fed. R. Civ. P. 23(e)(2)(A)-(D). Further, the court “may consider some or all” of the following
2 factors:

3 (1) the strength of plaintiff’s case; (2) the risk, expense, complexity,
4 and likely duration of further litigation; (3) the risk of maintaining
5 class action status throughout the trial; (4) the amount offered in
6 settlement; (5) the extent of discovery completed, and the stage of the
7 proceedings; (6) the experience and views of counsel; (7) the presence
8 of a governmental participant; and (8) the reaction of the class
9 members to the proposed settlement.

10 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009); *see also Hanlon*, 150 F.3d at
11 1026. “The relative degree of importance to be attached to any particular factor” is case specific.
12 *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th
13 Cir. 1982).

14 Settlements of collective action claims under the FLSA also require court approval. *Jones*
15 *v. Agilysys, Inc.*, No. 12-cv-03516 SBA, 2013 WL 4426504, at *2 (N.D. Cal. Aug. 15, 2013).

16 Before approving an FLSA settlement, the court must scrutinize it to determine if it is “a fair and
17 reasonable resolution of a bona fide dispute.” *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d
18 1350, 1354-55 (11th Cir. 1982). If the settlement reflects a reasonable compromise over issues
19 that are actually in dispute, the Court may approve the settlement “in order to promote the policy
20 of encouraging settlement of litigation.” *Id.* at 1354. Courts often apply the relevant Rule 23
21 factors to assess the reasonableness of a FLSA settlement while recognizing that some of the Rule
22 23 factors do not apply because of the inherent differences between class actions and FLSA
23 actions. *Khanna v. Inter-Con Sec. Sys., Inc.*, No. CIV S-09-2214 KJM, 2013 WL 1193485, at *2
24 (E.D. Cal. Mar. 22, 2013). The Court “must ultimately be satisfied that the settlement’s overall
25 effect is to vindicate, rather than frustrate, the purposes of the FLSA.” *Id.*

26 This case involves disputed issues relating to the proper calculation of overtime and the
27 extent of Defendant’s alleged liability under the FLSA. Specifically, the parties dispute: (1)
28 whether Defendant is entitled to seek offsets and credits pursuant to 29 U.S.C. section 207(h)(2);
(2) the proper method to calculate overtime compensation; (3) whether Defendant acted in good
faith such that Plaintiffs are not entitled to liquidated damages; and (4) the applicable statute of
limitations. The case also resolves several bona fide disputes between the parties related to the

1 state law claims, including the extent of Defendant’s liability under PAGA and whether Defendant
2 violated Cal. Labor Code section 226.7 by failing to provide meal and rest periods. Thus, the case
3 involves several bona fide disputes.

4 Based on the record as a whole, the Court finds that the relevant factors support a finding
5 that the Settlement is fair, adequate, and reasonable. Class Counsel and the named Plaintiffs have
6 adequately represented the Settlement Class Members. The Court hereby confirms the Law
7 Offices of Mastagni Holstedt, APC, as Class Counsel. The Court concludes that the settlement has
8 been reached as a result of intensive, serious, and non-collusive arm’s-length negotiations
9 conducted with the assistance of Jeffrey A. Ross during a mediation session conducted on
10 September 16, 2019.

11 The Court has also considered the nature of the claims, the amounts and kinds of benefits
12 paid in settlement, the allocation of settlement proceeds among the Settlement Class Members,
13 and the fact that a settlement represents a compromise of the parties’ respective positions rather
14 than the result of a finding of liability at trial. To settle the action, Defendant is required to pay a
15 total settlement of \$275,800. (Dkt. No. 80-2, Declaration of David E. Mastagni (“Mastagni
16 Decl.”) ¶ 23.) The twenty-eight Collective Action Members will receive \$84,237.55 of the total
17 settlement amount. (*Id.*) The FLSA damage calculations were made on an individual basis
18 determined by the number of overtime hours and applicable incentive payments for each Plaintiff.
19 (*Id.* ¶ 24.) The Collective Class will receive approximately one hundred percent of their
20 calculated FLSA damages based on salary methodology. (*Id.*) All Collective Action Members
21 have accepted the terms of the Settlement and damage calculations and executed individual
22 releases. (*See* Mastagni Decl., Ex. A at 41-67.) The forty-eight Class Settlement Members will
23 receive a pro rata portion of the remaining settlement amount. (*Id.* ¶¶ 24-25.) No Class Members
24 challenged the pay period information provided by Defendant. No objections have been filed. One
25 individual chose to opt out, which represents approximately 2% of the Class Members. (Snow
26 Decl. ¶¶ 11,13.)

27 Participating Class Members and Collective Action Members will receive an average gross
28 settlement payment of \$3,822.85. (Snow Decl. ¶ 15.) The estimated highest gross payment will

1 be \$ 16,687.42. (*Id.*) The lowest payment will be \$13.42. (*Id.*) Defendant has no reversionary
2 interest in the distribution amount. Accordingly, the Court also finds that relief provided for the
3 class is adequate. The parties have also shown that liability is not certain, and if the case were to
4 proceed to trial, the amount of damages could be reduced or eliminated. Additionally, the
5 favorable reaction of the Collective Class and Settlement Class favors granting the motion.

6 The Court concludes the Settlement is fair, reasonable, adequate and in the best interests
7 of the Collective Class and Settlement Class Members, and it GRANTS Plaintiffs' motion for
8 final approval.

9 **B. The Court Grants the Request for Fees, Costs, and Incentive Awards.**

10 **1. Attorneys' Fees.**

11 The Court has an "independent obligation" to ensure Plaintiffs' fee request is reasonable.
12 *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). In a
13 common fund case, district courts may use either the percentage-of-the-fund method or the
14 lodestar method to calculate an appropriate attorneys' fee award. *Id.* When applying the
15 percentage-of-the-fund method, an attorneys' fee award of "twenty-five percent is the
16 'benchmark' that district courts should award." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379
17 (9th Cir. 1995) (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th
18 Cir. 1990)). Even when courts employ the percentage of recovery method, a lodestar crosscheck
19 on the reasonableness of the fee is often performed. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
20 1047 (9th Cir. 2002). Any class member must be allowed an opportunity to object to the fee
21 motion itself, aside from any objection the class member may have to the preliminary notice that
22 such a motion will be filed. *See In re Mercury Interactive Corp. Sec. Litig.* 618 F.3d 988, 993-95
23 (9th Cir. 2010). Under the FLSA, prevailing parties are entitled to receive an award of fees for all
24 hours reasonably expended at rates in line with the "prevailing market rate of the relevant
25 community." *Carson v. Billings Police Dept.*, 470 F.3d 889, 891 (9th Cir. 2006).

26 Class Counsel requests fees in the amount of \$79,000. This request is 28.3% of the
27 settlement fund. The amount is slightly higher than the established twenty-five percent
28 benchmark for fee awards. However, reasonable fees often constitute a higher percentage of the

1 common fund when the fund is worth less than ten million dollars. *See Van Vranken v. Atlantic*
2 *Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995). The Court finds the requested award of
3 attorneys' fees is reasonable appropriate in light of the work that Class Counsel performed in the
4 case, the contingent nature of the action, and the results achieved.

5 A lodestar cross-check also supports the reasonableness of the requested fee award. The
6 low range of Plaintiffs' lodestar fees would amount to approximately \$188,748.00. Thus,
7 Plaintiffs' requested fee award is significantly less than even the low range of lodestar fees.
8 Plaintiffs' billing records reflects approximately 470 attorney hours and 700 hours worked total,
9 including the time spent by paralegals and accountants. Class Counsel sufficiently supported their
10 attorneys' fee request with declarations and billing records. (*See generally*, Supp. Mastagni Decl.)
11 The Court has reviewed the hourly rates and hours worked and finds them reasonable. Moreover,
12 a fee award of \$79,000 would equate to attorney time being at \$154.65 per hour, which is
13 significantly less than the hourly rates generally awarded. *See Slezak v. City of Palo Alto*, No. 16-
14 cv-03224-LHK, 2017 WL 2688224, at *7 (N.D. Cal. June 22, 2017).

15 Accordingly, the Court approves the request of \$79,000.00 in attorneys' fees. The
16 payment of fees to Class Counsel shall be made in accordance with the terms of the Settlement.

17 **2. Costs.**

18 Class Counsel seeks \$10,000.00 in costs, which encompasses mediation fees, filing fees,
19 courier charges, and travel expenses. Class Counsel's estimated total costs are \$8,229.64. This is
20 based on the costs spent on this case to date and the projected costs of the settlement
21 administrator. Class Counsel has expended \$6,925.99 and expects to pay an additional \$1,303.65
22 to the settlement administrator.¹

23 Accordingly, the Court GRANTS, IN PART, the request for costs. The Court approves the
24 payment of costs in the amount of \$8,229.64. The unaccounted portion of the requested costs,
25 which amounts to \$1,770.36, shall be added to the class fund per the terms of the Settlement
26

27 ¹ The settlement administrator estimates that their total costs will amount to \$3,607.30. (Supp.
28 Mastagni. Decl. ¶ 5.) \$1,000 of this amount will come from the settlement amount. The parties
will split the remaining amount.

1 Agreement. The payment of costs to Class Counsel shall be made from the common settlement
2 fund in accordance with the terms of the Settlement Agreement.

3 **3. The Court Grants the Request for Claims Administrator Fees.**

4 ILYM estimates its costs will be \$3,607.30. (Mastagni Supp. Decl. ¶ 5; Ex. B.) The
5 parties agree that \$1,000 of ILYM’s fees will be paid out of the total settlement amount. ILYM’s
6 remaining costs will be split equally by the parties. The Court GRANTS the request to approve
7 payment in the amount of \$1,000 to ILYM for settlement administration services in this matter
8 from the common settlement fund in accordance with the terms of the Settlement Agreement.

9 **4. The Court Grants Plaintiffs’ Request for an Incentive Award.**

10 Finally, Plaintiffs move for an incentive award in the amount of \$1.00 each to Plaintiffs
11 Taylor, Townley, and Zirkle. “Incentive awards are fairly typical in class action cases.”
12 *Rodriguez*, 563 F.3d at 958. The decision to approve such an award is a matter within the Court’s
13 discretion. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). An incentive
14 award is designed to “compensate class representatives for work done on behalf of the class, to
15 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
16 recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958-59.
17 “[D]istrict courts must be vigilant in scrutinizing all incentive awards to determine whether they
18 destroy the adequacy of the class representatives. ... [C]oncerns over potential conflicts may be
19 especially pressing where, ... the proposed service fees greatly exceed the payments to absent class
20 members.” *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013) (internal
21 citation and quotation marks omitted).

22 In wage and hour cases, many courts in this district have held that a \$5,000 incentive
23 award is “presumptively reasonable.” *See, e.g., Harris v. Vector Mktg. Corp.*, No. 08-cv-5198-
24 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012) (observing that “as a general matter,
25 \$5,000 is a reasonable amount”); *Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL
26 362395, at *11 (N.D. Cal. Jan. 29, 2016) (awarding \$5,000); *Odrick v. UnionBanCal Corp.*, No. C
27 10-5565 SBA, 2012 WL 6019495, at *7 (N.D. Cal. Dec. 3, 2012) (same). Incentive awards may
28 also be especially appropriate in wage and hour class actions, where a named plaintiff undertakes

1 “a significant ‘reputational risk’ in bringing [an] action against [plaintiff’s] former employer.”
2 *Covillo v. Specialty’s Café*, No. C-11-00594 DMR, 2014 WL 954516, at *8 (N.D. Cal. Mar. 6,
3 2014) (citing *Rodriguez*, 563 F.3d at 958-59).

4 Here, the named Plaintiffs request a nominal award not to exceed \$1 each. This request is
5 reasonable. The Court GRANTS the motion for incentive award in the amount of \$1.00 each to
6 Plaintiff Taylor, Plaintiff Townley, and Plaintiff Zirkle. The payment of the incentive awards
7 shall be paid from the common settlement fund in accordance with the terms of the Settlement
8 Agreement.

9 **CONCLUSION**

10 For the foregoing reasons, the Court GRANTS Plaintiffs’ motion for final approval and
11 GRANTS, IN PART, Plaintiffs’ motion for attorneys’ fees, costs, and incentive awards.

12 **IT IS FURTHER ORDERED:**

13 The Court directs the Parties and the Settlement Administrator to effectuate the
14 consummation and performance of the terms and provisions set forth in the Settlement Agreement
15 and this Final Approval Order and Judgment, including the timely disbursement of settlement
16 proceeds.

17 This Final Approval Order and Judgment shall permanently bar the Named Plaintiffs and
18 all Settlement Collective Action Members and Participating Class Members from prosecuting
19 against the released parties any and all Released Claims (as said terms are defined in the
20 Settlement Agreement) arising during the class members' released period (as defined in the
21 Settlement Agreement).

22 The Court reserves jurisdiction over this action for the purpose of enforcing the terms of
23 the Settlement Agreement.

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The Court hereby DISMISSES this action WITH PREJUDICE, and HEREIN ENTERS JUDGMENT in this matter. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: April 18, 2022



JEFFREY S. WHITE
United States District Judge