

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THANH HUYNH, et al.,  
Plaintiffs,  
v.  
HOUSING AUTHORITY OF THE  
COUNTY OF SANTA CLARA, et al.,  
Defendants.

Case No. 14-CV-02367-LHK  
**AMENDED ORDER GRANTING  
ATTORNEY’S FEES**  
Re: Dkt. No. 157

This order supersedes ECF No. 164, which was been vacated.

Plaintiffs<sup>1</sup> bring this action against the Housing Authority of the County of Santa Clara (“HACSC”) and Katherine Harasz, in her official capacity as HACSC’s Executive Director (collectively, “Defendants”). Before the Court is Plaintiff’s Motion for Attorney’s Fees and Costs. ECF No. 157. The Court held a hearing on this motion on March 16, 2017.

Having considered the submissions and oral arguments of the parties, the relevant law, and the record in this case, the Court GRANTS Plaintiff’s Motion for Attorney’s Fees and Costs. The

---

<sup>1</sup> The named Plaintiff households are: (1) Thanh Huynh, (2) Venus Benabides and Rudy Garcia, (3) Lynda Gomes and Nicholas Wallace, (4) Lillie Ware and Stephen Jones, and (5) Dehab Haile and Freihwet Tesfamariam. As discussed below, under the terms of the settlement agreement each named Plaintiff household will receive a \$10,000 Plaintiff incentive award.

1 Court awards \$712,500 in attorney’s fees and costs, as well as \$50,000 in named Plaintiff  
2 incentive awards.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 The Section 8 Voucher Program provides monthly housing subsidies to low-income  
6 individuals and their families. ECF No. 30 (“SAC”) ¶ 23. Unlike traditional public housing  
7 programs, subsidies provided under the Section 8 Program are “not tied to a particular unit in a  
8 particular building.” *Id.* ¶ 24. Instead, voucher holders find a private landlord willing to accept a  
9 Section 8 voucher. If the private landlord agrees to rent to the voucher holder, the landlord is paid  
10 a monthly subsidy by a local Public Housing Agency (“PHA”), known as the “housing assistance  
11 payment.” *Id.* ¶ 27. The voucher holder pays the remaining balance. *Id.* ¶ 23.

12 Various federal regulations govern how a local PHA may operate its Section 8 Program.  
13 Under 24 C.F.R. § 982.503(a), for instance, a “PHA must adopt a payment standard schedule that  
14 establishes voucher payment standard amounts for each [market] area in the PHA[’s] jurisdiction.”  
15 24 C.F.R. § 982.503(a). These voucher payment standards are based on the fair market value of  
16 rental units and “are used to calculate the monthly housing assistance payment for a family.” *Id.*  
17 According to Plaintiffs, Santa Clara County voucher holders were generally responsible “for  
18 paying a [monthly] rental amount equal to 30% of their income,” although the exact percentage  
19 varied. SAC ¶ 25. Likewise, 24 C.F.R. § 982.402(a) provides that a PHA “must establish subsidy  
20 standards that determine the number of bedrooms needed for families of different sizes and  
21 compositions.” 24 C.F.R. § 982.402(a). “For each family, the PHA determines the appropriate  
22 number of bedrooms under the PHA subsidy standards.” *Id.* Each voucher holder is “allocated a  
23 specific number of bedrooms . . . based on their family size and composition.” SAC ¶ 26.  
24 Although “a family [may] choose[] to live in a unit with more bedrooms than the family is  
25 allocated under the [subsidy] standard,” the subsidy standard establishes “the maximum amount  
26 [of] housing assistance” that a voucher holder may receive. *Id.* Finally, 24 C.F.R. § 982.54(a)  
27 requires PHAs to “adopt a written administrative plan that establishes local policies for

1 administration of the program in accordance with HUD requirements.” 24 C.F.R. § 982.54(a).

2 Given the complex interplay between these regulations, the Court takes a moment to  
3 review them in additional detail. Family size and composition determine the number of bedrooms  
4 that a voucher holder is allocated, which in turn determines the voucher holder’s subsidy standard.  
5 The subsidy standard is tied to a payment standard schedule, which is set by the market value for  
6 rental units within a particular area. By way of example, HACSC will “pay no more than  
7 \$1628.00 towards a 2-bedroom unit.” SAC ¶ 25. A Santa Clara County voucher holder allocated  
8 a two-bedroom unit would therefore receive a maximum subsidy of \$1628. The voucher holder  
9 may decide to rent a three-bedroom unit, but will not receive any more than \$1628, unless the  
10 market value for a two-bedroom unit changes.

11 Defendant HACSC is the PHA responsible for administering the Section 8 Program in  
12 Santa Clara County. *Id.* ¶ 17. As Executive Director, Katherine Harasz (“Harasz”) is responsible  
13 for “carrying out the duties outlined in the [HACSC’s] Administrative Plan and the regulations  
14 promulgated by [HUD].” *Id.* ¶ 16.

15 In early 2013, “the federal government imposed an \$85 billion across-the-board cut in  
16 discretionary federal spending.” Def. Mot. at 5. Known as “sequestration” or the “sequester,” this  
17 reduction “resulted in an approximately \$2 billion decrease to HUD’s housing support programs,  
18 including \$21 million in funding for HACSC’s Voucher Program.” *Id.* In order to address this  
19 decrease in funding, HACSC made significant revisions to its administration of the Section 8  
20 Program on March 1, 2013. SAC ¶ 28.

21 Two such changes are relevant to the instant action. First, prior to March 1, 2013,  
22 “children of the opposite sex (unless they were very, very young children) and persons from  
23 different generations (parents, grandparents, children) were not required to share a room.” *Id.* ¶  
24 29. After March 1, 2013, “the head of household (with spouse, co-head, Registered Domestic  
25 Partner, or boyfriend/girlfriend if any) [were assigned] one room and an additional bedroom [was  
26 assigned] for every two persons regardless of age or gender.” *Id.* Second, “[t]he revised  
27 calculations increased each participant’s total tenant payment from 30% to 35% of their gross

1 monthly income or \$50 a month, whichever [was] higher.” Def. Mot. at 5–6.

2 These changes resulted in many voucher holders receiving a smaller bedroom allocation  
3 and a smaller subsidy. SAC ¶ 31. Subsequent to these changes, each named Plaintiff submitted a  
4 reasonable accommodation request for an additional bedroom based on at least one family  
5 member having a documented disability. *Id.* ¶ 3. HACSC denied these requests.

6 **B. Procedural History**

7 On April 14, 2014, Huynh filed the original complaint in this case in Santa Clara County  
8 Superior Court. ECF No. 1-1 (“Compl.”). Defendants removed this case to federal court on May  
9 22, 2014. ECF No. 1. On May 29, 2014, Defendants moved to dismiss the original complaint.  
10 ECF No. 8 (“Mot. to Dismiss”). The Court granted in part and denied in part Defendants’ motion  
11 to dismiss on September 2, 2014, ECF No. 14 (“MTD Order”), and Huynh subsequently filed a  
12 First Amended Complaint. ECF No. 18 (“FAC”). On January 7, 2015, the Court granted Huynh’s  
13 request to file a Second Amended Complaint, and on January 12, 2015, Huynh—now joined by  
14 the rest of the named Plaintiffs—filed the SAC. Defendants answered the SAC on February 6,  
15 2015. ECF No. 31.

16 The SAC contains five substantive causes of action, based on violations of (1) the Fair  
17 Housing Amendments Act, (2) the Fair Employment and Housing Act, (3) the California Disabled  
18 Persons Act, (4) Section 504 of the Rehabilitation Act, and (5) the Americans with Disabilities  
19 Act. The SAC also includes a sixth cause of action for declaratory relief.

20 On September 17, 2015, Plaintiffs moved for class certification pursuant to Federal Rules  
21 of Civil Procedure 23(b)(2) and 23(b)(3). After holding a hearing on Plaintiffs’ motion, the Court  
22 granted Plaintiffs’ motion on November 12, 2015. ECF No. 67 (“Class Cert. Order”).

23 Specifically, the Court certified the following Class:

24 Santa Clara County Section 8 voucher holders who have disabilities and/or have  
25 family members with disabilities who (1) made a reasonable accommodation  
26 request to HACSC for an additional bedroom after July 1, 2013, (2) had a  
27 documented and undisputed need for a separate bedroom, (3) were denied a  
28 disability-related increase in the number of bedrooms by HACSC, (4) were not  
previously granted a permanent reasonable accommodation request, (5) did not

1 request the additional bedroom for a live-in caregiver or for storage of medical  
2 equipment, and (6) have at least one family member who is not disabled.

3 *Id.* at 23. In addition, the Court appointed Thanh Huynh, Venus Benabides, Rudy Garcia, Lynda  
4 Gomes, Nicholas Wallace, Lillie Ware, Stephen Jones, Dehab Haile, and Freihiwet Tesfamariam  
5 as Class Representatives and the Law Foundation of Silicon Valley as Class Counsel. *Id.*

6 Pursuant to Federal Rule of Civil Procedure 23(c)(2), the parties filed a proposed Notice  
7 and Opt Out Form for the Court’s review on April 1, 2016. ECF No. 90; Fed. R. Civ. P. 23(c)(2)  
8 (requiring parties to send “the best notice that is practicable under the circumstances . . . [f]or any  
9 class certified under Rule 23(b)(3)”). The Court made suggested amendments to these documents,  
10 which the parties adopted in full on April 6, 2016. ECF No. 93. The Court approved the amended  
11 Notice and Opt Out Form on April 6, 2016, which included an opt out deadline of May 5, 2016.  
12 ECF No. 95; *see Torrasi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993) (approving  
13 opt out deadline of less than one month after notice). There have been three opt outs from the  
14 class.

15 On November 25, 2015, Defendants filed before the Ninth Circuit a petition for permission  
16 to appeal the Court’s class certification order. ECF No. 71. The Ninth Circuit denied this petition  
17 on April 6, 2016. ECF No. 96.

18 On March 10, 2016, the parties filed cross-motions for summary judgment. ECF No. 79  
19 (“Def. Mot.”); ECF No. 80 (“Pls. Mot.”). On May 10, 2016, the Court issued an order which  
20 included three questions for the parties to address at the May 12, 2016 hearing on the parties’  
21 cross-motions for summary judgment. ECF No. 101. In addition, the Court requested the parties  
22 to file a response to a fourth question. ECF No. 101 at 1. The parties filed their responses on May  
23 11, 2016. ECF Nos. 102 & 103. The Court held a hearing on the motions on May 12, 2016. ECF  
24 No. 104.

25 On May 12, 2016, the Court granted in part and denied in part Plaintiffs’ motion for  
26 summary judgment and denied Defendants’ motion for summary judgment. ECF No. 106.  
27 Specifically, the Court found that, as alleged, Defendants’ blanket reasonable accommodation  
28 policy violated the FHAA, the FEHA, the CDPA, Section 504, and the ADA. *Id.* at 43. However,

1 the Court found that a dispute of material fact existed as to whether Defendants actually  
2 implemented the alleged blanket reasonable accommodation policy. *Id.*

3 After filing several motions in limine, ECF Nos. 118–121, and preparing for trial, the  
4 parties filed a notice of settlement on June 8, 2016, ECF No. 135. The parties then filed a motion  
5 for preliminary approval of class action settlement on August 11, 2016. ECF No. 139. Before the  
6 hearing on the motion for preliminary approval, the Court ordered the parties to respond to several  
7 issues regarding the proposed settlement. ECF No. 145.

8 As relevant to the instant motion, the Court ordered the parties to provide additional  
9 justification for their requests for attorney’s fees and service awards. *Id.* at 2. First, the Court noted  
10 that Fish & Richardson requested attorney’s fees even though Fish & Richardson had never been  
11 appointed Class Counsel and Fish & Richardson had consistently represented to the public that it  
12 provided legal assistance in this case on a pro bono basis. *Id.* The Court requested Class Counsel  
13 to identify any legal authority allowing for the recovery of attorney’s fees and costs in a class  
14 action settlement in these circumstances. *Id.* The Court also noted that \$5,000 was the benchmark  
15 for an award for representative plaintiffs, and the Court requested Class Counsel to state “why the  
16 representative Plaintiffs should receive \$10,000 each in service awards.” *Id.* at 3. The parties filed  
17 responses addressing these issues on September 8, 2016. ECF Nos. 146–47.

18 The Court held a hearing on the motion for preliminary approval of class action settlement  
19 on September 15, 2016, and granted the motion for preliminary approval the same day. ECF Nos.  
20 148–49. At the September 15, 2016 hearing, the parties stated that the proposed settlement could  
21 not go into effect until the settlement was approved by HACSC’s Board of Commissioners and the  
22 United States Department of Housing and Urban Development (“HUD”). This approval was  
23 delayed, and therefore the Court twice continued the notice and settlement administration  
24 deadlines set in the Court’s order granting preliminary approval. ECF Nos. 153 & 156.

25 The parties filed the motion for final approval of class action settlement, ECF No. 158, and  
26 the instant motion for attorney’s fees, costs, and incentive payments, ECF No. 157, on February  
27 14, 2017. Defendants filed a statement of non-opposition to the motions on March 2, 2017. ECF

28

1 No. 159. Plaintiffs filed a reply on March 9, 2017. ECF No. 160. The Court held a hearing on the  
2 motions on March 16, 2017. ECF No. 161.

3 **II. LEGAL STANDARD**

4 Rule 23(h) of the Federal Rules of Civil Procedure provides that “[i]n a certified class  
5 action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by  
6 law or by the parties’ agreement.” “[A]wards of attorneys’ fees serve the dual purpose of  
7 encouraging persons to seek redress for damages caused to an entire class of persons and  
8 discouraging future misconduct.” *In re Apollo Group Inc. Secs. Litig.*, 2012 U.S. Dist. LEXIS  
9 55622, at \*19 (D. Ariz. Apr. 20, 2012). In considering whether requested attorney’s fees are  
10 reasonable, a court should consider “the quality of representation, the benefit obtained for the  
11 class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *In re*  
12 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

13 In civil rights cases, the court should use the lodestar method when calculating Plaintiffs’  
14 reasonable attorneys’ fees. *See, e.g., Muniz v. United Parcel Serv., Inc.*, 738 F.3d 214, 222 (9th  
15 Cir. 2013) (“In general, California courts, like their federal counterparts, utilize the lodestar (or  
16 ‘touchstone’) approach to determine a proper fee award to a prevailing plaintiff in a civil rights  
17 law suit.”). The lodestar method calculates fees based on the number of hours reasonably spent on  
18 litigation multiplied by a reasonable hourly rate. *See, e.g., Jordan v. Multnomah Cnty.*, 815 F.2d  
19 1258, 1262 (9th Cir. 1987); *Doran v. Corte Madera Inn Best W.*, 360 F. Supp. 2d 1057, 1060  
20 (N.D. Cal. 2005).

21 Under the Civil Local Rules for United States District Court for the Northern District of  
22 California, a motion for attorneys’ fees and costs must include (1) the number of hours spent on  
23 the litigation by each biller, (2) detailed billing records showing how much time was spent on each  
24 task, and (3) each biller’s billable rate and justification for such rate. Additionally, for each biller  
25 who worked on this action, Class Counsel must specify whether any court within the Northern  
26 District of California has approved the biller’s billable rate.

27 Additionally, “named plaintiffs . . . are eligible for reasonable incentive payments.” *Staton*

1 v. *Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). Incentive payments must be evaluated based on  
2 “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class  
3 has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in  
4 pursuing the litigation . . . and reasonabl[e] fear[s of] . . . retaliation.” *Id.* (quoting *Cook v. Niedert*,  
5 142 F.3d 1004, 1016 (7th Cir. 1998)). “To assess whether an incentive payment is excessive,  
6 district courts balance ‘the number of named plaintiffs receiving incentive payments, the  
7 proportion of the payments relative to the settlement amount, and the size of each payment.’”  
8 *Hopson v. Hanesbrands Inc.*, 2009 WL 928133, at \*10 (N.D. Cal. Apr. 3, 2009) (quoting *Staton*,  
9 327 F.3d at 977).

10 **III. DISCUSSION**

11 Pursuant to the terms of the settlement agreement, Plaintiffs request \$712,500 in attorney’s  
12 fees and costs, as well as \$50,000 in named Plaintiff incentive payments. The instant case is a civil  
13 rights case, and therefore the Court utilizes the lodestar method to determine if Plaintiffs’  
14 \$712,500 request for attorney’s fees and costs is reasonable. *See, e.g., Muniz*, 738 F.3d at 222 (9th  
15 Cir. 2013) (“In general, California courts, like their federal counterparts, utilize the lodestar (or  
16 ‘touchstone’) approach to determine a proper fee award to a prevailing plaintiff in a civil rights  
17 law suit.”). Under the lodestar method, a “lodestar figure is calculated by multiplying the number  
18 of hours the prevailing party reasonably expended on the litigation (as supported by adequate  
19 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In*  
20 *re Bluetooth*, 654 F.3d 935, 941 (9th Cir. 2011) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 965  
21 (9th Cir. 2003)). The district court may adjust this lodestar figure “upward or downward by an  
22 appropriate positive or negative multiplier reflecting a host of reasonableness factors.” *Id.* at 941–  
23 42 (citations and internal quotation marks omitted). These factors include “the quality of  
24 representation, the benefit obtained for the class, the complexity and novelty of the issues  
25 presented, and the risk of nonpayment.” *Id.* (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
26 1029 (9th Cir. 1998)).

27 In the motion for attorney’s fees, both Law Foundation of Silicon Valley (“Law



1 Foundation”), which the Court previously appointed as Class Counsel, and Fish & Richardson  
 2 P.C., which the Court did not appoint as Class Counsel, have requested attorney’s fees. In total,  
 3 Plaintiffs report a lodestar of \$1,125,992 for attorneys, consisting of \$498,192 for Fish &  
 4 Richardson and \$627,800 for Law Foundation. Plaintiffs also report a lodestar of \$46,523.50 for  
 5 paralegals, entirely attributable to Fish & Richardson. Finally, Plaintiffs report \$20,142.68 in  
 6 costs, consisting of \$12,438.92 for Fish & Richardson and \$7,703.76 for Law Foundation.

7 In the settlement agreement, the parties agreed to a total award of \$712,500 for reasonable  
 8 attorneys’ fees and costs. ECF No. 156, at 4. Therefore, the Court must decide whether this award  
 9 of \$712,500 is reasonable in light of the reported lodestar and considering “the quality of  
 10 representation, the benefit obtained for the class, the complexity and novelty of the issues  
 11 presented, and the risk of nonpayment.” *In re Bluetooth*, 654 F.3d at 942. The Court addresses the  
 12 lodestar of Law Foundation and Fish & Richardson separately. The Court then considers  
 13 Plaintiffs’ requested incentive awards for the named Plaintiff households.

14 **A. Law Foundation**

15 Law Foundation reports a lodestar for attorneys of \$627,800. According to Law  
 16 Foundation, eight attorneys from Law Foundation worked on this action. The hourly rates for  
 17 these attorneys are as follows:

Name	Title	Graduation Year	Rate	Hours	Fees
Kazantzis, Kyra A.	Directing Attorney	1990	\$800	94	\$75,200
Kirkham, Annette D,	Senior Attorney	2001	\$660	557.92	\$368,227
Melissa Morris	MHAP Supervising Attorney	2004	\$635	22.4	\$14,509
Nadia Aziz	Senior Attorney	2007	\$545	72.54	\$39,534
Brodfehrer, Kara E.	MHAP Senior Attorney	2008	\$545	167.95	\$91,015
Thomas Zito	Senior Attorney	2010	\$415	131.40	\$54,531
Judy Wong	Fellow	2014	\$325	29.25	\$9,506
Matthew Warren	Staff Attorney	2015	\$325	25.6	\$8,320

25 These rates are based on fee rates approved by Santa Clara County Superior Court Judge  
 26 Mark Pierce in *CBIA v. City of San Jose*, 110CV167289 (Santa Clara Sup. Ct.). Additionally, Law  
 27

1 Foundation has provided information about the education and legal experience of each of the  
2 billing attorneys. Having reviewed this information, the Court finds that the education and  
3 experience of each attorney justifies each of the requested rates.

4 Next, the Court considers the *In re Bluetooth* factors—the quality of representation, the  
5 benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of  
6 nonpayment—and finds that each factor weighs in favor of Law Foundation’s requested fees.

7 First, Law Foundation achieved a result that was beneficial to the Class. The settlement  
8 that Law Foundation has negotiated with HACSC provides for significant benefits to the class.  
9 Most importantly, HACSC has agreed to stop the practice at issue. Specifically, when considering  
10 a request for reasonable accommodation for an additional bedroom that results in an adjustment to  
11 a Household’s subsidy size, HACSC will not consider a living room as a bedroom. ECF No. 141-  
12 1, at 3. HACSC will also require its staff to attend training sessions regarding the new plan and  
13 will retain an expert on disability law to provide such training. *Id.* at 4. Furthermore, HACSC will  
14 provide an increase in the subsidy size for class members in the future. *Id.* at 4–5. Additionally,  
15 HACSC will pay \$3,200,000 in damages to a class of 180 members. All class members will  
16 receive 100% of their actual damages as calculated by Plaintiffs’ expert. These actual damages  
17 payments will range from \$916 to \$25,406. *Id.* at 6–7. In addition, \$695,560 will be distributed as  
18 emotional distress damages to class members who experienced homelessness. *Id.*

19 Second, the instant case presented complex and novel issues. Law Foundation faced the  
20 previously undecided issue of whether a blanket policy of denying subsidy increases for an extra  
21 bedroom violated federal antidiscrimination law, as well as the previously undecided issue of  
22 whether a living area can be counted as a sleeping area when processing accommodation requests.  
23 ECF No. 106, at 29.

24 Third, Law Foundation faced the possibility of losing at trial and thus a risk of nonpayment  
25 in the absence of settlement. The parties filed a notice of settlement on the eve of trial. In ruling on  
26 the parties’ motions for summary judgment, the Court found that a blanket policy of denying  
27 requests for a larger subsidy would violate federal antidiscrimination law, but the Court also found

1 that there was a disputed question of fact whether HACSC actually had such a blanket policy.  
 2 HACSC contended that it evaluated class members on a case-by-case basis. If the jury had found  
 3 in HACSC’s favor on this issue, the class would not have recovered any damages, and Law  
 4 Foundation would not have been paid.

5 Thus, the *In re Bluetooth* factors support Law Foundation’s request for attorney’s fees and  
 6 costs. Therefore, the Court finds that Law Foundation’s request for \$627,800 in attorney’s fees  
 7 and \$7,703.76 in costs, for a total of \$635,503.76 is reasonable.

8 **B. Fish & Richardson**

9 Fish & Richardson reports a lodestar for attorneys of \$498,192, a lodestar for paralegals of  
 10 \$46,523.50, and costs of \$12,438.92. According to Fish & Richardson, eleven attorneys from Fish  
 11 & Richardson worked on this action. The hourly rates and total billing for these attorneys and  
 12 paralegals is as follows.

Name	Title	Graduation Year (JD)	Average Hourly Rate	Hours	Fees
Vidal, Katherine Z.	Principal	1996	\$862.07	84	\$72,414
Headley, Michael R.	Principal	2002	\$700	58.4	\$40,880
Lamberson, Jonathan	Principal	2005	\$676.75	156	\$105,573
Basso, Bryan	Associate	2011	\$530	18.8	\$9,964
RaoRane, Meghana	Associate	2007	\$475	133.4	\$63,365
Petersen Garff, Emily	Associate	2014	\$362.54	232.2	\$84,181.50
Victorson, Holly	Associate	2015	\$329.09	321.1	\$105,671.50
Alana Mannigé	Associate	2016	\$330.11	48.9	\$16,142.50
Wheeler, Julie M.	Paralegal	N/A	\$274.92	109.1	\$29,993.50
Goodrich, Trevor	Paralegal	N/A	\$255	60.1	\$15,325.50
Taylor, James	Paralegal	N/A	\$236.18	5.1	\$1,204.50

21 Fish & Richardson has stated that none of these rates have been approved by a court in the  
 22 Northern District of California. ECF No. 157-1, at 2–5. However, Fish & Richardson has provided  
 23 information about the education and legal experience of each of the billing attorneys. Having  
 24 reviewed this information, the Court finds that the education and experience of each attorney  
 25 justifies each of the requested rates.

26 However, Fish & Richardson has not given any information about the education or legal  
 27 experience of the paralegals for whom it requests fees. Therefore, because the Court has no

1 information about the education or experience of the paralegals and because no Court in the  
2 Northern District of California has approved these paralegals' rates, the Court declines to approve  
3 the paralegals' rates. The Court therefore will not consider the \$46,523.50 attributable to  
4 paralegals as part of Fish & Richardson's lodestar. *See In re Yahoo Mail Litig.*, 2016 WL  
5 4474612, at \*9 (N.D. Cal. Aug. 25, 2016) (excluding requested fees under similar circumstances).  
6 In addition, consideration of the paralegal fees is unnecessary because Fish & Richardson requests  
7 only a small portion of its reported fees. This small portion is more than justified by the fees  
8 reported by attorneys alone.

9         The Court next considers whether the hours reported by Fish & Richardson are reasonable  
10 in light of the work performed. In the Court's Order Regarding Preliminary Approval Hearing on  
11 September 1, 2016, the Court noted that "Fish and Richardson entered its first appearance in this  
12 action on November 6, 2015, . . . after the motion for class certification was fully briefed." ECF  
13 No. 145, at 2. Thus, Fish & Richardson was never appointed as Class Counsel. Additionally, the  
14 Court noted that Fish & Richardson had "consistently represented to the public that it has provided  
15 legal assistance in this case on a pro bono basis." *Id.*

16         In its motion for attorney's fees, Fish & Richardson has provided authority supporting its  
17 position that Fish & Richardson may receive attorney's fees and costs although the firm was never  
18 appointed Class Counsel and represented that it was litigating the case pro bono. First, Fish &  
19 Richardson states that Federal Rule of Civil Procedure ("Rule") 23 allows for non-class-counsel to  
20 receive attorney's fees. Specifically, Fish & Richardson points to the Committee Notes for the  
21 2003 amendment when Rule 23(h) was enacted, which state that Rule 23(h) "provides a format for  
22 all awards of attorney fees and nontaxable costs in connection with a class action, not only the  
23 award to class counsel. In some situations, there may be a basis for making an award to other  
24 counsel whose work produced a beneficial result for the class, such as attorneys who acted for the  
25 class before certification but were not appointed class counsel, or attorneys who represented  
26 objectors to a proposed settlement under Rule 23(e) or to the fee motion of class counsel. Other  
27 situations in which fee awards are authorized by law or by agreement of the parties may exist."

1 Fed. R. Civ. P. 23 advisory committee’s note to 2003 amendment; *see also Kyurkjian v. Axa*, No.  
2 2:02-CV- 01750-CAS, 2014 WL 1577767, at \*1 (C.D. Cal. Apr. 21, 2014) (“The Court agrees that  
3 Rule 23(h) authorizes the award of attorneys’ fees to attorneys other than class counsel.”).

4 In the instant case, the award for attorney’s fees and costs is made pursuant to the  
5 settlement agreement between the parties, which provides for a total award of \$712,500.  
6 Additionally, pursuant to a September 2015 agreement between Fish & Richardson and Law  
7 Foundation, Fish & Richardson agreed not to waive its claims to attorney fees and agreed to  
8 donate any attorney’s fees that Fish & Richardson recovered to Law Foundation. Although the  
9 better course would have been for Fish & Richardson to seek appointment as co-Class Counsel, in  
10 this instance, because Fish & Richardson will donate its fees to Law Foundation pursuant to the  
11 September 2015 agreement, the Court finds that Fish & Richardson was effectively working on  
12 behalf of Class Counsel and is therefore entitled to fees under Rule 23(h).

13 Fish & Richardson also points out that the Ninth Circuit has held that “[a]ttorneys’ fees are  
14 recoverable by pro bono attorneys to the same extent that they are recoverable by attorneys who  
15 charge for their services.” *Voice v. Stormans Inc.*, 757 F.3d 1015, 1017 (9th Cir. 2014); *see also*  
16 *Blanchard v. Bergeron*, 489 U.S. 87, 94, 109 S. Ct. 939, 103 L.Ed.2d 67 (1989) (“[W]here there  
17 are lawyers or organizations that will take a plaintiff’s case without compensation, that fact does  
18 not bar the award of a reasonable fee.”).

19 In the instant case, the Court finds that Fish & Richardson is entitled to attorney’s fees  
20 because Fish & Richardson was effectively working on behalf of Class Counsel and will donate its  
21 fees to Law Foundation pursuant to the September 2015 agreement. ECF No. 157, at 19.  
22 Additionally, the Court’s concerns about granting fees are alleviated somewhat because the  
23 requested fees and costs are provided for separately in the settlement and will not come out of the  
24 recovery for the class. ECF No. 141-1, at 6–7.

25 The Court appreciates Fish & Richardson’s dedication of significant resources to litigate  
26 this case pro bono and the fact that Fish & Richardson and Law Foundation have obtained such  
27 significant benefits for the class, namely \$3,200,000 in damages, which provides 100% recovery

1 of all class members’ actual damages as calculated by Plaintiffs’ expert, and \$695,560 in  
2 emotional distress damages. However, the number of hours billed by Fish & Richardson appears  
3 high relative to the number of hours billed by Law Foundation. Fish & Richardson has represented  
4 that it conducted several depositions, “handled the motions for summary judgment,” “took the lead  
5 in pre-trial preparations,” and participated in the mediation session. ECF No. 157, at 5–6. In doing  
6 so, Fish & Richardson recorded more attorney hours (even excluding Fish & Richardson’s  
7 paralegal hours) than Law Foundation, which had drafted the pleadings, litigated a motion to  
8 dismiss, conducted extensive discovery, litigated the motion for class certification, assisted with  
9 pre-trial preparations, and participated in the mediation session. In short, Law Foundation litigated  
10 the case for a year and a half before Fish & Richardson began working on the case.

11 Nevertheless, the Court need not conduct a detailed inquiry into the reasonableness of each  
12 of Fish & Richardson’s billing entries. As discussed above, pursuant to the settlement Plaintiffs  
13 request a total of \$712,500 in attorney’s fees and costs. The Court has already found that an award  
14 of \$635,503.76 in attorney’s fees and costs for the work of Law Foundation is reasonable. Thus, as  
15 long as Fish & Richardson’s fees and costs of \$76,996.24 are reasonable, the Court will award the  
16 Plaintiffs’ total request of \$712,500 in attorney’s fees and costs.

17 As discussed above, Fish & Richardson conducted several depositions, “handled the  
18 motions for summary judgment,” “took the lead in pre-trial preparations,” and participated in the  
19 mediation session. *Id.* at 5–6. Moreover, Fish & Richardson obtained significant benefits for the  
20 class. Therefore, the Court concludes that Fish & Richardson incurred reasonable fees and costs of  
21 \$76,996.24.

22 Accordingly, for the reasons discussed above, the Court finds that the *In re Bluetooth*  
23 *Litigation* factors support Plaintiffs’ full requested amount of \$712,500 in attorney’s fees and  
24 costs.

25 **C. Incentive Awards for Named Plaintiffs**

26 In evaluating whether representative plaintiffs are entitled to reasonable incentive  
27 payments, district courts “must evaluate their awards individually, using ‘relevant factors

1 including the actions the plaintiff has taken to protect the interests of the class, the degree to which  
2 the class has benefitted from those actions...the amount of time and effort the plaintiff expended in  
3 pursuing the litigation...and reasonabl[e] fear[s of] workplace retaliation.” *Staton*, 327 F.3d at 977  
4 (alterations in original) (quoting *Cook v. Niedert*, 142 F.3d 1004 (7th Cir. 1998)).

5 Plaintiffs request \$10,000 incentive payments for each of the named Plaintiff households,  
6 for a total of \$50,000 in incentive payments. Plaintiffs argue that the *Staton* factors are met for  
7 each of the named Plaintiffs for several reasons. First, Plaintiffs argue that the named Plaintiffs  
8 helped to secure an excellent result for the class and that the incentive awards are roughly  
9 equivalent to the damages awards to class members. ECF No. 157, at 30 (“Here, many class  
10 members will be receiving more than \$10,000 and a large portion will be receiving more than  
11 \$20,000.”). Second, Plaintiffs claim that the named Plaintiffs “have expended significant time and  
12 effort in this litigation,” including being deposed and participating in two days of settlement  
13 conferences. *Id.* Third, Plaintiffs state that the named Plaintiffs disclosed potentially embarrassing  
14 details regarding physical and mental disabilities and financial status. *Id.* Finally, Plaintiffs claim  
15 that the named Plaintiffs “risked retaliation from HACSC that could have left them homeless.” *Id.*

16 The Court finds that the *Staton* factors justify granting each of the named Plaintiff  
17 households a \$10,000 incentive award. According to the motion for attorney’s fees, the named  
18 Plaintiffs have devoted substantial time to this case. All of the named Plaintiffs were deposed and  
19 participated in two full days of settlement conferences. Additionally, the named Plaintiffs took the  
20 important step of disclosing potentially embarrassing information about physical and mental  
21 disabilities, financial status, and homelessness. In doing so, Plaintiffs helped to obtain an  
22 important benefit for the class, including \$3,200,000 in damages and meaningful injunctive relief.  
23 In participating in this litigation, Plaintiffs also risked retaliation, because HACSC had the power  
24 to reduce the named Plaintiffs’ subsidies or otherwise adversely affect their living situations. This  
25 risk of retaliation, which could have threatened Plaintiffs’ ability to live in their homes, is even  
26 more serious than workplace retaliation.

27 Although the requested payments are higher than the \$5,000 benchmark, the Court has

1 approved similar awards in the past when the Class received significant benefit. *See, e.g., Coates*  
 2 *v. Farmers Grp., Inc.*, No. 15-CV-01913-LHK, 2016 WL 5791413, at \*2 (N.D. Cal. Sept. 30,  
 3 2016); *Taylor v. Freight*, No. 10-CV-02118, ECF No. 115 (N.D. Cal. Jan. 27, 2012) (approving  
 4 awards up to \$25,000). Further, the actual damages awards to class members, which ranged from  
 5 \$916 to \$25,406 and will be supplemented by emotional distress damages, were somewhat  
 6 comparable and in many cases higher than the requested \$10,000 incentive awards. This supports  
 7 the reasonableness of the requested incentive awards. *Compare Wallace v. Countrywide Home*  
 8 *Loans, Inc.*, 2014 WL 5819870, at \*4 (C.D. Cal. Apr. 14, 2014) (rejecting settlement where  
 9 service awards were “33 times greater than the maximum possible recovery of other individual  
 10 class members”), *with Lemus v. H & R Block Enters. LLC*, 2012 WL 3638550, at \*5–6 (N.D. Cal.  
 11 Aug. 22, 2012) (approving \$15,000 service awards where the average class recovery was about  
 12 \$1,200).

13 Finally, the incentive awards in the instant case are \$10,000 for each named Plaintiff  
 14 households. Four out of the five named Plaintiff households include two named Plaintiffs: (1)  
 15 Thanh Huynh, (2) Venus Benabides and Rudy Garcia, (3) Lynda Gomes and Nicholas Wallace,  
 16 (4) Lillie Ware and Stephen Jones, and (5) Dehab Haile and Freihwet Tesfamariam. Thus, each of  
 17 these four households will receive \$5,000 per person, which is comparable to the benchmark  
 18 announced by the Ninth Circuit. Only Thanh Huynh, the first named Plaintiff, will receive  
 19 \$10,000 as the sole representative of his household. However, as the first named Plaintiff, Huynh  
 20 faces a significantly higher risk of retaliation and embarrassment, and therefore this higher award  
 21 is warranted. For these reasons, the Court finds that a \$10,000 incentive award to each of the five  
 22 named Plaintiff households is reasonable.

23 **IV. CONCLUSION**

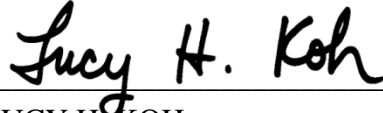
24 For the foregoing reasons, the Court GRANTS Plaintiffs’ motion for attorney’s fees, costs,  
 25 and named Plaintiff incentive awards. Specifically, the Court grants \$712,500 in attorney’s fees  
 26 and costs. The Court also grants \$10,000 to each named Plaintiff household as an incentive award,  
 27 for a total of \$50,000 in incentive awards.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED.**

Dated: March 17, 2017



---

LUCY H. KOH  
United States District Judge