

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**

DEAN SHEIKH, ET AL.,
Plaintiffs,
v.
TESLA, INC.,
Defendant.

Case No. 17-cv-02193-BLF

**ORDER GRANTING PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
GRANTING PLAINTIFFS’ MOTION
FOR SERVICE AWARDS,
ATTORNEYS’ FEES, AND COSTS AND
EXPENSES**

[Re: ECF 55, 63]

On October 17, 2018, the Court heard (1) Plaintiffs’ Motion for Final Approval of Class Action Settlement (ECF 63) and (2) Plaintiffs’ Motion for Service Awards, Attorneys’ Fees, and Costs and Expenses (ECF 55). For the reasons discussed below, the motions are GRANTED.

I. BACKGROUND

In October 2016, Defendant Tesla, Inc. (“Tesla”), a commercial seller of battery-powered electric vehicles, announced it would release Enhanced Autopilot for certain of its Hardware 2 (“HW2”) vehicles, which consumers could purchase for \$5,000. *See* Second Am. Class Action Compl. (“SAC”) ¶¶ 35–36, ECF 24. Enhanced Autopilot added new capabilities to Tesla’s existing Autopilot function. At the time of its release of Enhanced Autopilot, Tesla represented that the software for these features was “expected to complete validation and be rolled out to your car via an over-the-air update in December 2016, subject to regulatory approval.” *Id.* ¶ 40. Tesla began rolling out Enhanced Autopilot features to the vehicles (via remote updates) in January 2017. *See id.* ¶ 34. Over the next several months, the features were improved and augmented, with substantially all promised features delivered by September 2017. *See* Prelim. Appr. Mot. at 4, ECF 43. All of the HW2 vehicles were also to be equipped with standard safety features, which Tesla represented would “become available in December 2016.” *See* SAC ¶ 2. The safety

1 features were rolled out beginning in January 2017, and the rollout was substantially completed in
2 May 2017. *See* Prelim. Appr. Mot. at 4.

3 Plaintiffs are residents of several different states and each purchased or leased an HW2
4 vehicle, as well as the optional \$5,000 Enhanced Autopilot package. *See* SAC ¶¶ 8, 11, 14, 17, 26.
5 When they received their vehicles in December 2016, the standard safety and Enhanced Autopilot
6 features were not yet operational. As of May and September 2017, the standard safety and
7 Enhanced Autopilot features, respectively, were substantially fully operational. *See* Prelim. Appr.
8 Mot. at 5. Because they did not receive these features by December 2016, Plaintiffs brought this
9 putative class action law suit, asserting claims individually and on behalf of others who purchased
10 Tesla vehicles with Enhanced Autopilot under California’s Unfair Competition Law (“UCL”),
11 Consumers Legal Remedies Act (“CLRA”), and False Advertising Law (“FAL”), California
12 common law, and, in the alternative, consumer protection and common law claims under the laws
13 of the states of each of the named Plaintiffs. *See generally* SAC.

14 After Plaintiffs filed two amended complaints and engaged in preliminary discovery, the
15 parties agreed to engage in early mediation on November 2, 2017. *See* Decl. of Thomas. E. Loeser
16 ISO Prelim. Appr. Mot. ¶¶ 2–3, ECF 44. The parties reached the contours of a settlement
17 agreement on that date and reached a final settlement on April 27, 2018. *Id.* ¶ 5. On June 8, 2018,
18 the Court granted Plaintiffs’ motion for preliminary approval of class action settlement and set a
19 fairness hearing for October 17, 2018. *See* Order Granting Preliminary Approval (“Prelim.
20 Order”), ECF 50.

21 The Agreement defines the “Settlement Class” as:

22 All U.S. residents who purchased Enhanced Autopilot in connection with their
23 purchase or lease of a Tesla Hardware 2 Model S or Model X vehicle delivered to
them on or before September 30, 2017.

24 Agreement § I.A, ECF 44-1.

25 Under the Agreement, Defendants have agreed to provide a Settlement Fund in the amount
26 of \$5,415,280. *Id.* § II.A.1. The Settlement Fund will be used to pay any attorneys’ fees and
27 costs, any service awards to the class representatives, and payments to the settlement class
28 members, but settlement notice and administration costs shall be paid separately by Tesla. *Id.* Any

1 residual amount after the second attempted distribution of funds to class members will be donated
2 to the Ohio State University Center for Automotive Research and/or Texas A&M Transportation
3 Institute, Center for Transportation Safety. *Id.* § IV.3. Each class member will be paid a portion
4 of the fund based on a combination of the following: (1) Tesla’s representations regarding the
5 timing of the release of the Enhanced Autopilot features as of the date the Settlement Class
6 Members ordered their vehicles, (2) the timing and content of Tesla’s Enhanced Autopilot
7 software releases, and (3) the date that the Settlement Class Members took delivery of their
8 vehicles. *Id.* §§ II.B; IX.C.

9 The Settlement Administrator provided notice to the 32,410 class members via direct mail
10 on July 23, 2018. *See* Decl. of Lana Lucchesi ISO Final Appr. Mot ¶¶ 7–8, ECF 65. The
11 Settlement Administrator also maintained a toll-free phone number and website to provide notice.
12 *Id.* ¶¶ 10–11. The Settlement Administrator represents that the notice by mail reached 98.61% of
13 all class members and the phone number received 195 calls. *See id.* ¶¶ 10–11. The Settlement
14 Administrator received 94 requests for exclusion¹ and no objections. *See id.* ¶¶ 12–13. Two
15 objections were filed with the Court.

16 On October 17, 2018, the Court heard Plaintiffs’ Motion for Final Approval of Class
17 Action Settlement and Plaintiffs’ Motion for Service Awards, Attorneys’ Fees, and Costs and
18 Expenses. The Court indicated on the record that both motions would be granted.

19 **II. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

20 In order to grant final approval of the class action settlement, the Court must determine
21 that (1) the class meets the requirements for certification under Federal Rule of Civil Procedure
22 23, and (2) the settlement reached on behalf of the class is fair, reasonable, and adequate. *See*
23 *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) (“Especially in the context of a case in
24 which the parties reach a settlement agreement prior to class certification, courts must peruse the
25 proposed compromise to ratify both the propriety of the certification and the fairness of the
26

27 ¹ On September 4, 2018, the Court received a letter from Mr. Bernard Gonzalez asking to be
28 excluded from the class action settlement. *See* ECF 67. At the final approval hearing, defense
counsel represented that Mr. Gonzalez is included in the Settlement Administrator’s exclusion list.
Final Appr. Hearing Tr. at 3:5–8, ECF 70.

1 settlement.”).

2 **A. The Class Meets the Requirements for Certification under Rule 23**

3 A class action is maintainable only if it meets the four requirements of Rule 23(a):

- 4 (1) the class is so numerous that joinder of all members is
5 impracticable;
- 6 (2) there are questions of law or fact common to the class;
- 7 (3) the claims or defenses of the representative parties are
8 typical of the claims or defenses of the class; and
- 9 (4) the representative parties will fairly and adequately protect
the interests of the class.

10 Fed. R. Civ. P. 23(a). In a settlement-only certification context, the “specifications of the Rule –
11 those designed to protect absentees by blocking unwarranted or overbroad class definitions –
12 demand undiluted, even heightened, attention.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,
13 620 (1997).

14 In addition to satisfying the Rule 23(a) requirements, “parties seeking class certification
15 must show that the action is maintainable under Rule 23(b)(1), (2), or (3).” *Id.* at 614. Plaintiffs
16 seek certification under Rule 23(b)(3), which requires that (1) “questions of law or fact common to
17 class members predominate over any questions affecting only individual members” and (2) “a
18 class action is superior to other available methods for fairly and efficiently adjudicating the
19 controversy.” Fed. R. Civ. P. 23(b)(3).

20 The Court concluded that these requirements were satisfied when it granted preliminary
21 approval of the class action settlement. *See* Prelim. Order. The Court is not aware of any new
22 facts which would alter that conclusion. However, the Court reviews the Rule 23 requirements
23 again briefly, as follows.

24 Turning first to the Rule 23(a) prerequisites, the Court has no difficulty in concluding that
25 because the class contains 32,410 members, joinder of all class members would be impracticable.
26 *See* Lucchesi Decl. ¶ 9. The commonality requirement is met because the key issue in the case is
27 the same for all class members, namely whether Tesla’s conduct with respect to its representations
28 and delivery of the features violated consumer protection statutes, false advertising laws, sales

1 contracts, and other laws as asserted in the complaint. Plaintiffs’ claims are typical of those of the
2 class, as they advance the same claims, share identical legal theories, and experienced alleged
3 delayed delivery and insufficient functionality of the features. *See Hanlon v. Chrysler Corp.*, 150
4 F.3d 1011, 1020 (9th Cir. 1998) (typicality requires only that the claims of the class
5 representatives be “reasonably co-extensive with those of absent class members”). Finally, to
6 determine Plaintiffs’ adequacy, the Court “must resolve two questions: (1) do the named plaintiffs
7 and their counsel have any conflicts of interest with other class members and (2) will the named
8 plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Ellis v. Costco*
9 *Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011) (internal quotation marks and citation
10 omitted). The Court has no reservations regarding the abilities of Class Counsel or their zeal in
11 representing the class, and the record discloses no conflict of interest which would preclude
12 Plaintiffs from acting as class representatives.

13 With respect to Rule 23(b)(3), the “predominance inquiry tests whether proposed classes
14 are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623.
15 The primary common question in this case—whether Tesla’s conduct with respect to its
16 representations and delivery of the features violated consumer protection statutes, false advertising
17 laws, sales contracts, and other laws as asserted in the complaint—predominates. Given that
18 commonality, and the number of class members, the Court concludes that a class action is a
19 superior mechanism for adjudicating the claims at issue.

20 Accordingly, the Court concludes that the requirements of Rule 23 are met and thus that
21 certification of the class for settlement purposes is appropriate. Dean Sheikh, John Kelner, Tom
22 Milone, Daury Lamarche, and Michael Verdolin are hereby appointed as class representatives and
23 the Steve W. Berman, Thomas E. Loeser, and Robert F. Lopez of Hagens Berman Sobol Shapiro
24 LLP are appointed class counsel.

25 **B. The Settlement is Fundamentally Fair, Adequate, and Reasonable**

26 Federal Rule of Civil Procedure 23(e) provides that “[t]he claims, issues, or defenses of a
27 certified class may be settled, voluntarily dismissed, or compromised only with the court’s
28 approval.” Fed. R. Civ. P. 23(e). “Adequate notice is critical to court approval of a class

1 settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. Moreover, “[a] district court’s approval
2 of a class-action settlement must be accompanied by a finding that the settlement is ‘fair,
3 reasonable, and adequate.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (quoting
4 Fed. R. Civ. P. 23(e)). “[A] district court’s only role in reviewing the substance of that settlement
5 is to ensure that it is fair, adequate, and free from collusion.” *Id.* (internal quotation marks and
6 citation omitted). In making that determination, the district court is guided by an eight-factor test
7 articulated by the Ninth Circuit in *Hanlon v. Chrysler Corp* (“*Hanlon* factors”). *Id.* Those factors
8 include:

9 the strength of the plaintiffs’ case; the risk, expense, complexity, and likely
10 duration of further litigation; the risk of maintaining class action status throughout
11 the trial; the amount offered in settlement; the extent of discovery completed and
12 the stage of the proceedings; the experience and views of counsel; the presence of a
13 governmental participant; and the reaction of the class members to the proposed
14 settlement.

13 *Hanlon*, 150 F.3d at 1026–27; see also *Lane*, 696 F.3d at 819 (discussing *Hanlon* factors).

14 “Additionally, when (as here) the settlement takes place before formal class certification,
15 settlement approval requires a ‘higher standard of fairness.’” *Lane*, 696 F.3d at 819 (quoting
16 *Hanlon*, 150 F.3d at 1026).

17 **1. Notice was Adequate**

18 The Court previously approved Plaintiffs’ plan for providing notice to the class when it
19 granted preliminary approval of the class action settlement. See Prelim. Order. Prior to granting
20 preliminary approval, the Court examined carefully the proposed class notice and notice plan and
21 determined that they complied with Federal Rule of Civil Procedure 23 and Due Process. *Id.* ¶ 9.
22 Plaintiffs have provided a declaration of the Settlement Administrator describing implementation
23 of the notice plan. See Lucchesi Decl. The Court has summarized the key portions of those
24 declarations in section I, above. Based on those declarations, it appears that at least 98.61% of all
25 class members received notice through direct postal mail. See *id.* ¶ 10–11. Moreover, the
26 Settlement Administrator established both a telephone number and website to supply notice. See
27 *id.* “[N]otice plans estimated to reach a minimum of 70 percent are constitutional and comply
28 with Rule 23.” *Edwards v. Nat’l Milk Producers Fed’n*, No. 11-CV-04766-JSW, 2017 WL

1 3623734, at *4 (N.D. Cal. June 26, 2017). The Court is satisfied that the class members were
2 provided with the best notice practicable under the circumstances, and that such notice was
3 adequate.

4 **2. Presumption of Correctness**

5 Before discussing the *Hanlon* factors, the Court notes that “[a] presumption of correctness
6 is said to ‘attach to a class settlement reached in arm’s-length negotiations between experienced
7 capable counsel after meaningful discovery.’” *In re Heritage Bond Litig.*, No. 02-ML-1475 DT,
8 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005) (quoting *Manual for Complex Litigation*
9 (Third) § 30.42 (1995)). The settlement in this case was the result of arms-length negotiations
10 between experienced counsel with the aid of a respected mediator. *See* Loeser Prelim. Appr. Decl.
11 ¶¶ 4–8. While there was no formal discovery, Plaintiffs’ counsel has submitted a declaration
12 describing the pre-suit investigation and informal discovery which was conducted. *Id.* ¶¶ 2–5, 15;
13 Decl. of Thomas E. Loeser ISO Fee and Service Award ¶ 7, ECF 56; Decl. of Thomas E. Loeser
14 ISO Final Appr. Mot. ¶ 2, ECF 64)

15 The Court therefore concludes that on this record a presumption of correctness applies to
16 the class action settlement.

17 **3. Hanlon Factors**

18 Turning to the *Hanlon* factors, the Court first considers the strength of Plaintiffs’ case,
19 weighing the likelihood of success on the merits and the range of possible recovery (factor 1).
20 While Plaintiffs’ claims certainly appear viable on their face, Tesla raised a variety of defenses,
21 including that it was transparent with its customers, that the release date was uncertain, and that its
22 statements were not fraudulent, misleading, or capable of being reasonably relied upon. *See* Def.
23 Memo. ISO Final Appr. at 10–11, ECF 66. Moreover, the case presented unique challenges in that
24 the features were rolled out gradually, such that as time passed, Plaintiffs’ claims lost strength.
25 *See id.* at 11; Final Appr. Mot. at 11–12. Finally, Plaintiffs were aware that their class action
26 allegations faced hurdles given variations in state law. Final Appr. Mot. at 12. With respect to the
27 risk, expense, complexity, and duration of litigation (factor 2), Plaintiffs would likely have faced
28 significant hurdles, including defense motions to dismiss, motions for summary judgment, and

1 opposition to class certification. *See id.* Litigation likely would have been protracted because
2 although the case was filed in mid-2017, the pleadings have not yet been settled. Given the
3 common questions of fact and law in this case, it is likely that the classes would have been
4 certified had the case progressed, at least as to classes in states with comparable laws (factor 3).

5 The settlement recovery is substantial given the size of the class for a consumer class
6 action case (factor 4). Under the terms of the Agreement, each class member who submits a valid
7 claim will receive between \$25 and \$280. Plaintiffs cite cases in which settlements awarded
8 comparable amounts to millions more consumers. *See* Final Appr. Mot. at 12–13. Given those
9 figures, the recovery obtained under this settlement is significant.

10 Little formal discovery had been completed at the time of settlement, and the case is in its
11 early stages (factor 5). However, Plaintiffs’ counsel conducted pre-suit investigation, ongoing
12 investigations leading to two amended pleadings, and informal discovery, and the case has been
13 pending for over a year. Loeser Prelim. Appr. Decl. ¶¶ 2–5, 15. The Court is satisfied that the
14 parties are sufficiently familiar with the issues in the case to have informed opinions regarding its
15 strengths and weaknesses (factor 6). Class Counsel specialize in litigation of consumer class
16 actions, and Tesla is represented by a well-respected law firm. Their views that the settlement is a
17 good one is entitled to significant weight. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d
18 1036, 1043 (N.D. Cal. 2008).

19 There is no government participant (factor 7). However, the class reaction to the
20 settlement is favorable (factor 8). There was only one true objection, which is discussed below.

21 Based on the foregoing reasons, and after considering the record as a whole as guided by
22 the *Hanlon* factors, the Court finds that the settlement is fair, adequate and reasonable.

23 **C. Mr. Yost’s Objection**

24 The Court received two objections to the settlement. However, only the objection from
25 Mr. Mark A. Yost substantively challenges the settlement. The other objection, from Mr. Douglas
26 I. Haines, appears to be an objection to the lawsuit itself, rather than to the settlement terms. *See*
27 ECF 54. In it, he states that he understood that the release of Tesla’s Enhanced Autopilot features
28 would take time and contends that Tesla should not be required to pay any money at all. *Id.* This

1 objection thus does not bar final approval.

2 Mr. Yost’s objection, by contrast, substantively challenges the settlement terms. Mr. Yost
3 argues that the disparity between the class representatives’ incentive awards and the recovery of
4 the individual class members is too great, such that it creates a conflict of interest between the
5 representatives and the class. *See* ECF 53 at 1. Specifically, Mr. Yost argues that the class
6 member awards of between \$20 and \$280 are only 0.5–5% of the class representatives’ \$4,800
7 award. *See id.* at 1, 3. To support his argument, Mr. Yost relies on the Ninth Circuit’s decision in
8 *Radcliffe v. Experian Information Solutions, Inc.*, 715 F.3d 1157 (9th Cir. 2013), in which the
9 Ninth Circuit held that, in light of their conditional incentive awards, the class representatives did
10 not adequately represent the absent class members.

11 The Court finds Mr. Yost’s objection is without merit. Courts in the Ninth Circuit
12 routinely approve settlements for incentive awards of \$5,000 where the recovery of the individual
13 class members is comparable or even less than is at issue here. *See, e.g., In re Online DVD-Rental*
14 *Antitrust Litig.*, 779 F.3d 934, 942–43, 947–48 (9th Cir. 2015) (approving \$5,000 incentive awards
15 where class members would receive roughly \$12 in gift cards or cash); *Wren v. RGIS Inventory*
16 *Specialists*, 2011 WL 1230826, at *31–*37 (N.D. Cal. Apr. 1, 2011) (approving \$5,000 service
17 awards to 20 named plaintiffs where “average award to class members [was] \$207.69”); *see also*
18 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), *as amended* (June 19, 2000)
19 (affirming settlement approval with \$5,000 incentive fee).

20 In *In re Online-DVD*, the disparity between the incentive awards and the individual
21 recovery was even greater than is at issue here. Nevertheless, the Ninth Circuit approved the
22 awards based on the limited number of class representatives, the incentive awards’ low values
23 compared to the overall class recovery, and the amount of work the class representatives were
24 required to complete in their roles. *See* 779 F.3d at 947–48. For these same reasons, approval is
25 warranted here. And as the Court in *In re Online-DVD* held, *Radcliffe* is not to the contrary, as
26 that case involved *conditional* incentive awards, which the class representatives could only
27 recover if they approved of the settlement. *See Radcliffe*, 715 F.3d at 1164. No such condition
28 exists here.

1 Further, as outlined by Plaintiffs’ counsel, the named Plaintiffs devoted substantial time in
2 assisting class counsel’s investigation and analyzing the evidence in the case. They even served as
3 field testers and reviewers of many of Tesla’s updates to Enhanced Autopilot. *See* Loeser Decl. ¶¶
4 15–16; Sheikh Decl. ¶¶ 3–8; Kelner Decl. ¶¶ 3–8; Milone Decl. ¶¶ 3–7; Lamarche Decl. ¶¶ 3–9;
5 Verdolin Decl. ¶¶ 3–5.

6 Accordingly, the objections to final approval of the settlement are OVERRULED.

7 **D. CONCLUSION**

8 For the foregoing reasons, and after considering the record as a whole (including Mr.
9 Yost’s objection) as guided by the *Hanlon* factors, the Court finds that notice of the proposed
10 settlement was adequate, the settlement was not the result of collusion, and the settlement is fair,
11 adequate and reasonable.

12 Plaintiffs’ Motion for Final Approval of Class Action Settlement is GRANTED.

13 **III. MOTION FOR SERVICE AWARDS, ATTORNEYS’ FEES, AND COSTS AND**
14 **EXPENSES**

15 Plaintiffs seek an award of attorneys’ fees totaling \$961,018.00, reimbursement of
16 litigation costs and expenses in the amount of \$14,981.95, and a service award of \$4,800 for each
17 class representative.

18 **A. Attorneys’ Fees and Expenses**

19 **1. Legal Standard**

20 “While attorneys’ fees and costs may be awarded in a certified class action where so
21 authorized by law or the parties’ agreement, Fed. R. Civ. P. 23(h), courts have an independent
22 obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have
23 already agreed to an amount.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th
24 Cir. 2011). “Where a settlement produces a common fund for the benefit of the entire class,” as
25 here, “courts have discretion to employ either the lodestar method or the percentage-of-recovery
26 method” to determine the reasonableness of attorneys’ fees. *Id.* at 942.

27 Under the percentage-of-recovery method, the attorneys are awarded fees in the amount of
28 a percentage of the common fund recovered for the class. *Id.* Courts applying this method

1 “typically calculate 25% of the fund as the benchmark for a reasonable fee award, providing
 2 adequate explanation in the record of any special circumstances justifying a departure.” *Id.*
 3 (internal quotation marks omitted). However, “[t]he benchmark percentage should be adjusted, or
 4 replaced by a lodestar calculation, when special circumstances indicate that the percentage
 5 recovery would be either too small or too large in light of the hours devoted to the case or other
 6 relevant factors.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.3d 1301, 1311 (9th
 7 Cir. 2011). Relevant factors to a determination of the percentage ultimately awarded include “(1)
 8 the results achieved; (2) the risk of litigation; (3) the skill required and quality of work; (4) the
 9 contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made
 10 in similar cases.” *Tarlecki v. bebe Stores, Inc.*, No. C 05-1777 MHP, 2009 WL 3720872, at *4
 11 (N.D. Cal. Nov. 3, 2009).

12 Under the lodestar method, attorneys’ fees are “calculated by multiplying the number of
 13 hours the prevailing party reasonably expended on the litigation (as supported by adequate
 14 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”
 15 *Bluetooth*, 654 F.3d at 941. This amount may be increased or decreased by a multiplier that
 16 reflects factors such as “the quality of representation, the benefit obtained for the class, the
 17 complexity and novelty of the issues presented, and the risk of nonpayment.” *Id.* at 942.

18 In common fund cases, a lodestar calculation may provide a cross-check on the
 19 reasonableness of a percentage award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir.
 20 2002). Where the attorneys’ investment in the case “is minimal, as in the case of an early
 21 settlement, the lodestar calculation may convince a court that a lower percentage is reasonable.”
 22 *Id.* “Similarly, the lodestar calculation can be helpful in suggesting a higher percentage when
 23 litigation has been protracted.” *Id.* Thus even when the primary basis of the fee award is the
 24 percentage method, “the lodestar may provide a useful perspective on the reasonableness of a
 25 given percentage award.” *Id.* “The lodestar cross-check calculation need entail neither
 26 mathematical precision nor bean counting. . . . [Courts] may rely on summaries submitted by the
 27 attorneys and need not review actual billing records.” *Covillo v. Specialty Cafe*, No. C-11-
 28 00594-DMR, 2014 WL 954516, at *6 (N.D. Cal. Mar. 6, 2014) (internal quotation marks and

1 citation omitted).

2 An attorney is also entitled to “recover as part of the award of attorney’s fees those out-of-
3 pocket expenses that would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24
4 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted).

5 **2. Discussion**

6 Plaintiff seeks an award of attorneys’ fees totaling \$961,018, which represents 17.7% of
7 the \$5.4 million gross Settlement Fund, as well as litigation expenses and costs in the amount of
8 \$14,981.95.

9 Addressing expenses first, the Court has no hesitation in approving an award in the
10 requested amount of \$14,981.95. Class Counsel have submitted an itemized list of expenses. *See*
11 *Loeser Final Appr. Decl.* ¶ 16, Ex. B. The Court has reviewed the list and finds the expenses to be
12 reasonable.

13 The Court likewise is satisfied that the request for attorneys’ fees is reasonable. Using the
14 percentage-of-recovery method, the Court starts at the 25% benchmark. *See Bluetooth*, 654 at
15 942. Plaintiffs’ request only 17.7%, despite the exceptional results achieved, the risk of litigation,
16 the fine quality of Class Counsel’s work, and the contingent nature of the fee. A lodestar cross-
17 check confirms the reasonableness of the requested fee, which amounts to a 2.36 multiplier of the
18 lodestar. *See Loeser Final Appr. Decl.* ¶¶ 2, 6, Ex. A. “Multipliers of 1 to 4 are commonly found
19 to be appropriate in common fund cases.” *Aboudi v. T-Mobile USA, Inc.*, No. 12-CV-2169 BTM
20 NLS, 2015 WL 4923602, at *7 (S.D. Cal. Aug. 18, 2015). Thus, a multiplier of 2.36 is within the
21 range of reasonableness.

22 Plaintiffs’ motion for attorneys’ fees and expenses is GRANTED. Plaintiff is awarded
23 expenses in the amount of \$14,981.95 and attorneys’ fees in the amount of \$961,018.

24 **B. Incentive Award**

25 The class representatives request incentive awards in the amount of \$4,800. Incentive
26 awards “are discretionary . . . and are intended to compensate class representatives for work done
27 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
28 action, and, sometimes, to recognize their willingness to act as a private attorney general.”

1 *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (internal citation omitted).

2 “Incentive awards typically range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor*
3 *Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015). The class representatives’ participation in this
4 case was substantial and was essential to obtaining the considerable monetary recovery which will
5 be enjoyed by each class member. *See* Loeser Fee & Service Decl. ¶ 17. *See generally* ECF 57–61
6 (class representative declarations). Given the amount of work the representatives put into the case
7 and the success of the recovery, an incentive award in the amount of \$4,800 is proportional to the
8 class members’ recoveries, which will range between \$25 and \$280. *See Willner v. Manpower*
9 *Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625, at *9 (N.D. Cal. June 22, 2015) (district court
10 must “consider the proportionality between the incentive payment and the range of class members’
11 settlement awards.”).

12 The Court concludes that the requested \$4,800 incentive award is appropriate in this case.

13 **IV. ORDER**

14 For the reasons discussed above,

- 15 (1) Plaintiffs’ Motion for Final Approval of Class Action Settlement is GRANTED;
16 and
17 (2) Plaintiffs’ Motion for Service Awards, Attorneys’ Fees, and Costs and Expenses is
18 GRANTED. Plaintiffs are awarded attorneys’ fees in the amount of \$961,018.00,
19 costs and expenses in the amount of \$14,981.95, and service awards in the amount
20 of \$4,800 per class representative.

21 Without affecting the finality of this Order and accompanying Judgment in any way, the
22 Court retains jurisdiction over (1) implementation and enforcement of the Settlement Agreement
23 until each and every act agreed to be performed by the parties pursuant to the Settlement
24 Agreement has been performed; (2) any other actions necessary to conclude the Settlement and to
25 administer, effectuate, interpret, and monitor compliance with the provisions of the Settlement
26 Agreement; and (3) all parties to this action and Settlement class members for the purpose of
27 implementing and enforcing the Settlement Agreement. Within 21 days after the distribution of
28 the settlement funds and payment of attorneys’ fees, the parties shall file a Post-Distribution

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

Accounting in accordance with this District’s Procedural Guidance for Class Action Settlements.

IT IS SO ORDERED.

Dated: November 2, 2018



BETH LABSON FREEMAN
United States District Judge