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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

CHARLES SMITH, HECTOR CASAS, and  
BARRY NEWMANN, individually and on  
behalf of all other similarly situated,  
  
Plaintiffs,  
  
vs.  
  
CRST VAN EXPEDITED, INC., et al.,  
  
Defendants.

CASE NO. 10-CV-1116- IEG (WMC)  
**ORDER:**  
**1. GRANTING MOTION FOR  
FINAL APPROVAL OF  
CLASS ACTION  
SETTLEMENT AND  
AWARD OF INCENTIVE  
PAYMENTS TO CLASS  
REPRESENTATIVES**  
  
[Doc. No. 88]  
**2. GRANTING MOTION FOR  
ATTORNEYS' FEES AND  
COSTS.**  
  
[Doc. No. 81]

Presently before the Court are Plaintiffs' motion for final settlement approval and incentive payments to class representatives, [Doc. No. 88], and Plaintiffs' motion for attorneys' fees and costs. [Doc. No. 81.] For the reasons stated below, both motions are **GRANTED**.

**BACKGROUND**

This is a class action by truck drivers against their employer, CRST Van Expedited, Inc. ("CRST"), for failure to pay minimum wages during certain stages of the company's driver training program and related violations of California Business and Professions Code Section 17200. [See, e.g., Doc. No. 1, Ex. A (original complaint).] The class is represented by Charles Smith, Hector Casas, and Barry Newmann (collectively, the "Class Representatives"). Three portions of CRST's training

1 program, (1) truck driver training school; (2) orientation; and (3) over-the-road training, pertain to the  
2 claims alleged as follows:

- 3 1. Truck driver training school: Certain drivers, referred to as Contract Student Drivers,  
4 were required to attend an 8 month truck driving school with the option of doing so at  
5 CRST's expense if they signed Driver Employment Contracts. Under the Driver  
6 Employment Contracts, if those drivers did not remain employed with CRST for a full  
7 8 months, they would be obligated to pay CRST \$3,950. This amount was ostensibly  
8 to repay the cost of the program, but was in fact \$2,450 more than the cost of the  
9 program, and thus Plaintiffs allege the obligation to pay constituted an unenforceable  
10 penalty.
- 11 2. Orientation: All drivers were required to attend orientation, for which no compensation  
12 was paid. Plaintiffs allege they were entitled to California and federal minimum wage  
13 for the roughly 29 hours spent in this orientation.
- 14 3. Over-the-road training: Certain drivers were required to participate in over-the-road  
15 training, for which they received a flat \$50 per day rate for 28 days. Plaintiffs allege  
16 this rate failed to meet the California and federal minimum wage.

17 After nearly three years litigating these claims, the parties agreed to a proposed settlement,  
18 [see Doc. No. 76-4 at 12-108 (Joint Stipulation of Settlement and Release of Class Action) (the  
19 "settlement")], which the Court preliminarily approved on April 23, 2012. [Doc. No. 78.] For  
20 settlement purposes,<sup>1</sup> the Court certified the following class divided into subclasses:

21 Persons who resided in the State of California at the time of their date of hire  
22 and who worked as truck drivers for CRST Van Expedited, Inc. between November 5,  
23 2005 and April 23, 2012. These persons are divided into the following subclasses:

24 **Subclass 1** – Contract Student Drivers [Drivers who attended truck driver  
25 training school at CRST's expense] who worked for CRST for more than 8 months, or  
26 who have a current balance that CRST contends is still owed for training expenses  
27 which is less than \$500;

28 **Subclass 2** – Contract Student Drivers who have a current balance of \$500 or  
more, which CRST contends is still owed for their training expenses, or who are  
employed by CRST as of the date of Preliminary Approval Date, but have not  
completed the 8 months required by their Driver Employment Contacts; and

**Subclass 3** – Drivers who were not Contract Student Drivers [Drivers who (a)  
paid for their own truck driver training school, (b) who pre-paid CRST for the cost of  
truck driver training school, or (c) who already had their Commercial Driver's License  
when they started work for CRST and did not attend truck driver training school].

As consideration for the release of all claims expressly and derivatively asserted in this  
action, the settlement provides the class with a total financial benefit in excess of \$11,600,000.

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<sup>1</sup> Having reviewed this class definition again, the Court hereby adopts its prior analysis  
and finds the requirements of Fed. R. Civ. P. 23 met for final settlement approval. [See Doc. No. 78.]

1 This includes a non-reversionary \$2,625,000 cash payout and over \$9,000,00 in outstanding debt  
2 under the Driver Employment Contracts that CRST agrees to relieve. In addition to the financial  
3 benefits of the settlement, CRST has agreed to significant changes to its policies and training  
4 program that will benefit its employees going forward, including a full disclosure form provided to  
5 employees prior to enrollment in the training program, temporary employee status for drivers  
6 when tested by the Department of Motor Vehicles, payment for drivers during orientation going  
7 forward, payment by a split mile basis rather than \$50 per day for over-the-road training going  
8 forward, and a \$250 bonus going forward for all drivers who remain employed eight months after  
9 completion of the training program. [See Doc. No. 88-5.]

## 10 DISCUSSION

### 11 I. Final Approval of the Settlement

12 Voluntary conciliation and settlement are the preferred means of dispute resolution in  
13 complex class action litigation. *Officers for Justice v. Civil Service Com'n of City and County of*  
14 *San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). And though, “[u]nlike the settlement of most  
15 private civil actions, class actions may be settled only with the approval of the district court,” “the  
16 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the  
17 parties to a lawsuit must be limited.” *Id.* at 623, 625; *see also* Fed. R. Civ. P. 23(e). Courts are not  
18 “to reach any ultimate conclusions on the contested issues of fact and law which underlie the  
19 merits of the dispute,” nor is “[t]he proposed settlement [] to be judged against a hypothetical or  
20 speculative measure of what might have been achieved by the negotiators.” *Id.* Rather, “a district  
21 court’s only role in reviewing the substance of [a] settlement is to ensure that it is ‘fair, adequate,  
22 and free of collusion.’” *Lane v. Facebook*, \_\_F.3d\_\_, 2012 WL 4125857, at \*3 (9th Cir. Sept. 20,  
23 2012) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

24 In making this appraisal, courts have “broad discretion” to consider a range of factors such  
25 as “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further  
26 litigation; the risk of maintaining class action status throughout the trial; the amount offered in  
27 settlement; the extent of discovery completed and the stage of the proceedings; the experience and  
28 views of counsel; the presence of a governmental participant; and the reaction of the class

1 members to the proposed settlement.” *Id.* (citing *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370,  
2 1375 (9th Cir.1993)). “The relative importance to be attached to any factor will depend upon and  
3 be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts  
4 and circumstances presented by each individual case.” *Officers for Justice*, 688 F.2d at 625.

5 Here, the Court finds the proposed settlement fair, adequate, and free of collusion. As  
6 discussed more fully below, the settlement is the product of arms-length negotiations by  
7 experienced counsel before a respected mediator, reached after and in light of years of litigation  
8 and ample discovery into the asserted claims, and provides the class with both a substantial cash  
9 recovery as well as significant debt relief, which together amount to over \$11,600,000 in  
10 ascertainable financial value. Moreover, the reaction of the class has been overwhelmingly  
11 positive and the lone objection is without merit.<sup>2</sup>

12 **A. Strengths and Risks of the Case and Value of the Settlement**

13 This case was initiated in November 2009, has progressed through several amended  
14 pleadings which revised and expanded claims, and Plaintiffs maintain they have developed a  
15 strong case. [Doc. No. 88-1.] Defendant disagrees and, should the case not settle, has committed  
16 to vigorously contesting the asserted claims. [Doc. No. 92.] But both parties acknowledge the  
17 significant risks and costs presented by further litigation and thus avoided by this reasonable  
18 compromise. Settlement was reached at the class certification stage with much of the case still to  
19 be litigated and thus prevents the likely expense, complexity, and duration of, *inter alia*, full  
20 discovery, summary judgment, expert reports, trial, and subsequent appeals. Numerous significant  
21 issues remain in dispute, including, *e.g.*, whether California or federal minimum wage laws apply,  
22 whether the claims are amenable to class wide proof, whether common issue predominate, and the  
23 measure and extent of damages. Not only expensive, going forward despite the many complex  
24 issues still in dispute risks further exposure and uncertainty for Defendant as well as impairment or  
25 delay of relief to the class.

26 Against these considerations, the parties have agreed to a settlement with a total financial

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28 <sup>2</sup> The lone objection to the settlement, that of James Cole, was found meritless and denied as detailed in a prior order of the Court. [Doc. No. 98.]

1 value of over \$11,600,000, which results in individual payouts to claimants in subclasses 1 and 2  
2 equating to over 180% and 140% of estimated damages, respectively. [See Doc. No. 88-5 at 4-5.]  
3 And subclass 2 receives a payout of over 35% of estimated damages as well as total subclass relief  
4 of over \$9,000,000 in debt, which equates to at least another \$500 in value to each member of  
5 subclass 2. This is an extremely favorable result given the considerable challenges the class faces  
6 should litigation continue. Moreover, the settlement avoids the risks of extreme results on either  
7 end, *i.e.*, complete or no recovery. Thus, it is plainly reasonable for the parties at this stage to find  
8 that the actual recovery realized and risks avoided here outweigh the opportunity to pursue  
9 potentially more favorable results through full adjudication. These factors support approval. *See*  
10 *Officers for Justice*, 688 F.2d at 625 (settlement is necessarily “an amalgam of delicate balancing,  
11 gross approximations and rough justice.”); *Facebook*, \_\_\_F.3d\_\_\_, 2012 WL 4125857, at \*3 (“the  
12 question whether a settlement is fundamentally fair . . . is different from the question whether the  
13 settlement is perfect in the estimation of the reviewing court.”).

#### 14 **B. Endorsement of Experienced Counsel**

15 Class counsel attest to decades of experience litigating class actions, including similar  
16 labor and overtime litigation as well as a range of other complex matters. [See Doc. No. 81-1  
17 (Declaration of A. Mark Pope); Doc. No. 81-5 (Declaration of Douglas J. Champion).] Given their  
18 extensive experience and understanding of the strengths and weaknesses of cases such as this,  
19 class counsel’s endorsement weighs in favor of final approval. *See Singer v. Beckon Dickinson*  
20 *and Co.*, 2010 WL 2196104, at \*6 (S.D. Cal. June 1, 2010).

#### 21 **C. Reaction of the Class**

22 The reaction of the class has been almost entirely positive. Of the over 7,000 class  
23 members noticed, 3,069 have submitted claims and only ten have opted out. [See Doc. No. 88-7,  
24 Ex. F (list of individuals who have opted-out).] Only a single class member objected, which  
25 objection the Court overruled as meritless. [See Doc. No. 98.] The small percentage of opt-outs  
26 and objectors strongly supports the fairness of the settlement. *Cf. McPhail v. First Command*  
27 *Financial Planning, Inc.*, 2009 WL 938841, at \*3 (S.D. Cal. March 30, 2009) (“If only a small  
28 number of objections are received, that fact can be viewed as indicative of the adequacy of the

1 settlement.”) (internal citations omitted).

2 **D. No Suggestion Of Collusion**

3 No aspect of the settlement suggests collusion. Rather it was reached after conference  
4 before the Honorable William J. McCurine and three full days of mediation before the Honorable  
5 Leo S. Papas (Ret.), [*see* Doc. 88-5 (Declaration of A. Mark Pope)], and neither the requested  
6 attorneys’ fees nor the requested incentive awards appear unreasonable, [*see infra*]. Nor has even  
7 the lone objector suggested collusion. Much to the contrary, the circumstances and extent of the  
8 parties’ negotiations suggest fundamental fairness and thus weigh in favor of approval.

9 In light of the foregoing reasons, the Court finds the settlement fair, adequate, and free of  
10 collusion, and thus **GRANTS** final approval of the settlement.

11 **II. Attorneys’ Fees**

12 This action asserts California claims premised on diversity jurisdiction, and thus the Court  
13 applies California law to determine both the right to and method for calculating fees. *See*  
14 *Mangold*, 67 F.3d at 1478. Under California law, the primary method for determining the amount  
15 of reasonable attorneys’ fees is the lodestar method, which multiplies the number of hours  
16 reasonably expended by a reasonable hourly rate with the court increasing or decreasing that  
17 amount by applying a positive or negative multiplier based on, among other factors, the quality of  
18 representation, the novelty and complexity of the issues, the results obtained, and the contingent  
19 risk presented. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 556–57 (2009). But in cases  
20 such as this, where the class benefit can be monetized with a reasonable degree of certainty, a  
21 percentage of the benefit approach may be used. *Id.* at 557–58 (citing *Lealao v. Beneficial*  
22 *California, Inc.*, 82 Cal.App.4th 19, 26–27 (2000)).

23 Under the percentage method, California has recognized that most fee awards based on  
24 either a lodestar or percentage calculation are 33 percent and has endorsed the federal benchmark  
25 of 25 percent. *In re Consumer Privacy Cases*, 175 Cal.App.4th at 556 n. 13. As to the settlement  
26 fund amount: “. . . The total fund could be used to measure whether the portion allocated to the  
27 class and to attorney fees is reasonable.” *Id.* at 553–54 (citing *Manual for Complex Litigation* (4th  
28 ed. 2008) § 21.71, p. 525). Always, “[t]he ultimate goal is to award a reasonable fee.” *See*

1 *Hartless v. Clorox*, 273 F.R.D. 630, 645 (S.D. Cal. 2011).

2 Here, the settlement confers a total financial benefit to the class in excess of \$11,600,000,  
3 including both a non-reversionary cash payment of \$2,625,000 and over \$9,000,000 in  
4 reimbursement/debt relief for those class member that CRST claims owed payment pursuant to  
5 Driver Employment Contracts (*i.e.*, for not working a full 8 months after truck driver training  
6 school). Additionally, the settlement confers non-financial benefits, including CRST's agreement  
7 to contact credit reporting agencies to remove record of debt relieved by the settlement, and  
8 substantial changes to CRST's training program that will benefit drivers going forward.

9 In light of the results achieved, the requested fees appear reasonable. The settlement  
10 provides for, and class counsel here seeks, an award of \$875,000 in fees which constitutes 33 1/3  
11 % of the cash payment but only 7.5 % of the total \$11,650,000 financial value of the settlement.  
12 These percentages compare favorably with both California (33%) and federal (25%) benchmarks.  
13 The requested fee compares well with a lodestar cross-check as well. Applying class counsel's  
14 hourly rates ranging from \$150 to \$450, which fall within if not below typical rates for attorneys  
15 of comparable experience, the total lodestar totals \$586,916.50. [*See, e.g.*, Doc. No. 81-3 at 78  
16 (summary class counsel hourly rates and hours expended).] An approximately 1.5 lodestar  
17 multiplier results in the \$875,000 requested fee. This appears reasonable given the risks borne by  
18 counsel proceeding on contingency, the duration and complexity of the case, as well as the  
19 substantial benefit realized for the class. *See Singer*, 2010 WL 2196104, at \*8 (awarding 33 1/3%  
20 in wage and hour class action); *Ingalls v. Hallmark Mktg. Corp.*, 08cv4342 (C.D. Cal. Oct. 16,  
21 2009) (awarding 33.33% fee on a \$5.6 million wage and hour class action); *Birch v. Office Depot,*  
22 *Inc.*, Case No. 06cv1690 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a \$16 million wage  
23 and hour class action); *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359 (S.D. Cal. Oct. 10, 2006)  
24 (awarding a 40% fee on a \$3.75 million wage and hour class action).

25 So, too, the requested costs appear reasonable. The settlement provides for not more than  
26 \$35,000 in attorney costs as well as reasonable costs for notice and claims administration. Class  
27 counsel seek \$29,160.32 in attorney costs and \$86,500 in claims administration costs. [*See* Doc.  
28 No. 88.] These amounts are within that contemplated by the settlement, have been endorsed by

1 experienced counsel and claims administration consultants involved in this case, and are thus  
2 presumed reasonable. [See *id.*] Further, nothing suggests the contrary. See *In re Media Vision*  
3 *Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (costs and expenses incurred by  
4 experience counsel in creating or preserving a common fund presumed reasonable); see also *In re*  
5 *Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding such costs  
6 and expenses “necessary” to class action litigation).

7 Thus, the Court hereby **GRANTS** Plaintiffs’ requested fees and costs.

### 8 **III. Incentive Payments to Class Representatives**

9 Each of the three Class Representatives seeks an incentive payment of \$15,000 for their  
10 service in prosecuting this action on behalf of the class. [See Doc. No. 88-1 at 20.] “The criteria  
11 courts may consider in determining whether to make an incentive award include: 1) the risk to the  
12 class representative in commencing suit, both financial and otherwise; 2) the notoriety and  
13 personal difficulties encountered by the class representative; 3) the amount of time and effort spent  
14 by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack  
15 thereof) enjoyed by the class representative as a result of the litigation.” *Van Vranken v. Atlantic*  
16 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.1995) (citations omitted).

17 Here, all of these factors weigh in favor of the awards sought. This employment class  
18 action risked and continues to risk the Class Representatives’ reputations and future employability  
19 in the field. It also exposed them to the possibility of joint and several liability for counterclaims.  
20 See *Martin v. AmeriPride Services, Inc.*, 2011 WL 2313604 (S.D. Cal. 2011) (acknowledging  
21 professional and legal risks posed to employees participating as class representatives in  
22 employment class actions). Further, each representative was active in assisting class counsel in a  
23 wide variety of respects from initiating the case, participating in conferences among opposing  
24 counsel, as well as investigators and other retained consultants, providing factual background and  
25 support, analyzing employment and training manuals, pay stubs, CRST document productions, and  
26 the contracts in dispute, and communicating with class counsel regularly in regard to the claims,  
27 defenses, and legal strategy in the case. Casas and Newmann attended the settlement conference  
28 before Judge McCurine and the first mediation session before Judge Papas. Smith was unable to



1 attend in person because of health issues, but made himself available for consultation by telephone  
2 as needed. [See Doc. Nos. 88-2, 88-3, 88-4 (Declarations of Smith, Casas, and Newmann,  
3 respectively).] This record of active involvement despite the risks posed supports approval of  
4 incentive awards. *Van Vranken*, 901 F.Supp. at 300.

5 Moreover, the amount of the incentive payments requested, \$15,000, is well within the  
6 range awarded in similar cases. See *Singer*, 2010 WL 2196104, at \*9 (\$25,000 incentive award);  
7 *Martin*, 2011 WL 2313604 (\$18,500 incentive award); *Brotherton v. Cleveland*, 141 F.Supp.2d  
8 907, 913–14 (S.D. Ohio 2001) (\$50,000 incentive award); *Van Vranken*, 901 F.Supp. at 300  
9 (\$50,000 incentive award).

10 Thus, the Court hereby **GRANTS** the requested class representative incentive awards.


11 **CONCLUSION**

12 For the foregoing reasons, the Court hereby:

- 13 • **GRANTS** final settlement approval;
- 14 • **GRANTS** Plaintiffs’ requests for class representative incentive awards;
- 15 • **GRANTS** Plaintiffs’ motion for attorneys’ fees and costs.

16 **IT IS SO ORDERED.**

17 **DATED:** January 14, 2013

  
**IRMA E. GONZALEZ**  
**United States District Judge**

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