

1 On August 24, 2015, this Court held a hearing on Plaintiffs' motion for an order granting approval
2 of Class Counsel's Attorneys' Fees and Litigation Costs, and for Service Payments. Plaintiffs seek
3 \$103,000.00 for attorneys' fees, and \$8,901.20 in litigation costs. Plaintiffs request approval of service
4 payments to Class Representatives as follows: \$11,000 to Plaintiff Arredondo, \$6,000 to Plaintiff
5 Edwards, and \$3,000 to Plaintiff Johnson. Based on the papers filed with the Court, the Court hereby
6 grants Class Counsel's request for attorneys' fees and litigation costs. The Court grants Plaintiffs'
7 request for service payments; however, the Court reduces the incentive payments to a total of \$15,000.00,
8 payable as follows: Cristina Arredondo: \$7,500.00; Tiffany Edwards: \$5,000.00; and Pamela Johnson:
9 \$2,500.00. The balance between this amount and the \$20,000.00 originally sought is ordered added back
10 to the common fund, for distribution to all class members.

11 **1. The Requested Award of Attorneys' Fees is Appropriate**

12 With regard to the attorneys' fees, California follows the "American rule," under which each party
13 to a lawsuit ordinarily must pay his, her or its own attorney fees. *Trope v. Katz* (1995) 11 Cal.4th 274,
14 278; *Gray v. Don Miller & Associates, Inc.*, (1984) 35 Cal.3d 498, 504. Code of Civil Procedure section
15 1021 codifies the rule, providing that the measure and mode of attorney compensation is left to the
16 agreement of the parties "[e]xcept as attorney's fees are specifically provided for by statute." Here, the
17 motion is brought under PAGA and various fee shifting provisions of the Labor Code.

18 A trial court has broad discretion in determining a reasonable amount of attorney fees. *PLCM*
19 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. "[T]he fee setting inquiry in California ordinarily
20 begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable
21 hourly rate. . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the
22 case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an
23 approach anchors the trial court's analysis to an objective determination of the value of the attorney's
24 services, ensuring that the amount awarded is not arbitrary." *Id.*

25 The court must consider such factors as the nature and complexity of the case, the results
26 obtained, the amount of work involved, the available resources, the nature of the issues and the burden of
27 discovery, the skill required and the time consumed, the court's own knowledge and experience, the time
28 spent, and rates charged in the community for similar work. *See Contractors Labor Pool, Inc. v. Westway*

1 *Contractors* (1997) 53 Cal.App.4th 152, 168; *see also Ghirardo v. Antonioli* (1993) 14 Cal.App.4th 215,
2 219.

3 One way to analyze this question is to compare the proposed net attorneys' fee award to a
4 hypothetical contingent fee award on a common fund. Other courts have found it useful to "cross check"
5 fee awards in this manner. *See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050; *Lealao*
6 *v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 24; *City of Oakland v. Oakland Raiders* (1988)
7 203 Cal.App.3d 78. Recent case law now expressly authorizes a trial court's use of a percentage of 33
8 percent of the common fund (which is the amount requested here). *See Laffite vs. Robert Half Int'l*, 231
9 Cal. App. 4th 860, 878 (2014).

10 Class Counsel herein provided the Court with the number of hours spent by Class Counsel, and
11 each attorney, on this litigation, and a discussion of the tasks performed by Class Counsel. Class Counsel
12 submits that its lodestar well exceeds the requested amount of \$103,000.00. Class Counsel also notes
13 that the requested amount is only 42% of their lodestar.

14 This was a case not without risk, and the attorneys seeking fees deserve credit for taking on the
15 case and reaching a creative settlement wherein they wait for payment just as the class does. The lawyers
16 have gone without any recompense since October of 2013. The court finds the time spent (about 522 hrs.
17 among three lawyers) to be appropriate given the needs of the case, the tasks undertaken, and the results
18 achieved. The record, including the absence of transitory billers, reflects efficiency and the proper use of
19 leverage (primarily Swan at a lower billing rate).

20 With regard to the hourly rates, they are likewise reasonable. \$500/hr. for a lawyer with a multi-
21 state class action practice (Bronson), and \$550 and \$400 for members of an established San Diego
22 plaintiffs' employment law firm (Gruenberg and Swan) are well within the norm for San Diego. The court
23 makes these findings having practiced law in San Diego for 20 years prior to 2005, and having had the
24 duty, in the intervening decade, to rule upon hundreds of fee applications in a variety of settings.

25 The attorneys' fees sought are \$103,000.00. Using the hours spent (522), the blended hourly rate
26 is less than \$200/hr. This is well under market for successful work of the sort done by counsel here. This
27 factor also favors granting the motion. *See Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 838
28 (2001).

1 Class Counsel submitted declarations reflecting \$8,901.20 in litigation expenses incurred as of
2 the filing of their final approval papers, a date prior to the final approval hearing. These costs included
3 filing and other court fees, travel expenses, copying and delivery charges, legal and other research
4 charges, mediator fees, and expert consultant fees. Plaintiffs claim that Class Counsel incurred these out-
5 of-pocket costs without assurance that they would be repaid. Plaintiffs further claim these litigation
6 expenses were necessary to secure the resolution of this litigation. Plaintiffs further claims that Class
7 Counsel may also incur additional costs in obtaining final approval and implementing the settlement.
8 Defendant does not oppose the request.

9 Therefore, an award to Class Counsel of \$103,000.00 for attorneys' fees and \$8,901.20 in
10 litigation costs is fair and reasonable in light of the nature of this case, Class Counsel's experience and
11 efforts undertaken in prosecuting this Action, and the benefits obtained for the Class.

12 2. **The Service Award Payments to the Class Representatives, As Adjusted by the**
13 **Court, is Fair and Reasonable**

14 The only aspect of the settlement in which the court departs from the requests contained in the
15 motion is the request for class representative incentive payments totaling \$20,000.00. The court believes
16 this figure unjustified under the circumstances of this case, and reduces it. The preliminary approval
17 order gave fair warning of the likelihood of such a decision. ROA 76, last page.

18 On the one hand, the court has been called upon in a variety of settings to impose substantial cost
19 awards on unsuccessful litigants, and understands the risks associated with agreeing to be named as a
20 class representative. *See Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433 [cost burden falls on
21 class reps, not absent class members].

22 On the other hand, trial courts have significant discretion to reduce incentive awards where
23 justified. Incentive awards to class representatives are intended to compensate class representatives for
24 the work and risk undertaken on behalf of the class, to reimburse expenses incurred in the class litigation,
25 and sometimes to recognize the willingness of class representatives to act as a private attorney general.
26 (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) An incentive award may
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1 be appropriate to induce someone to serve as a class representative. In determining whether to make
2 an incentive award, the court may consider (1) the risk, both financial and otherwise, the class
3 representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the
4 class representative; (3) the amount of time and effort spent by the class representative; (4) the duration
5 of the litigation; and (5) the personal benefit received by the class representative as a result of the
6 litigation. (*Id.* at pp. 1394-1395.) Incentive awards to class representatives are discretionary, and there
7 is no presumption of fairness in reviewing them. (*Cellphone Termination Fee Cases*, supra, 186
8 Cal.App.4th at pp. 1393, 1395.)

10 In this case, having reviewed the declarations of Arredondo, Edwards and Johnson (ROA 85-87),
11 the court feels that a reduction is appropriate. It is difficult to justify an award such as that sought by
12 Arredondo (\$11,000) in a case in which the average payout will be less than ten percent of that amount.
13 Although Arredondo contends she was singled out and ultimately fired because of her class rep status,
14 the incentive payment is not meant to replace proof of retaliatory discharge and proof of damages
15 associated therewith. Having considered the factors enunciated in the *Cellphone* case, the court orders
16 the following class rep incentive payments:
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18 Total of \$15,000.00, payable as follows: Cristina Arredondo: \$7,500.00; Tiffany Edwards:
19 \$5,000.00; Pamela Johnson: \$2,500.00.

21 The balance between this amount and the \$20,000.00 originally sought is ordered added back to
22 the common fund, for distribution to all class members.

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1 **IT IS HEREBY ORDERED that:**

2 Class Counsel's request for an award of attorneys' fees and costs as stated herein is GRANTED.
3 The Named Plaintiffs' requests for service awards are also GRANTED as modified, as stated above. The
4 awarded attorneys' fees and litigation costs and service payments, as ordered, shall be paid in accordance
5 with the terms of the Settlement Agreement and this Order.

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Dated: AUG 24 2015

Timothy B. Taylor
HON. TIMOTHY TAYLOR
JUDGE OF THE SUPERIOR COURT