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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

PAMELA CARTER, DEBORAH MARTIN, CHRISTINE MORALES, STANLEY CARAKER, STANLEY NICKS, MICHAELA VECHT, BERT SCHORLING, JEANETTE BREITEN, RAYMOND BACHAR, KATHERINE MITCHELL, STEPHANIE CASTRO, BRUCE HINSLEY, ARLENE POUNDS, individually and as Representatives of All Others Similarly Situated,

Plaintiffs,

vs.

STRATEGIC EQUITY GROUP; CHRISTOPHER KRAMER; SHORELINE CAPITAL, INC.; EDGEWATER CAPITAL, LLC and DOES 1-100, inclusive,

Defendants.

Case No.:
30-2016-00866025-CU-BT-CXC

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND SETTLEMENT ADMINISTRATION COSTS

Date: August 22, 2019
Time: 2:00 p.m.
Dept: CX102
Judge: Hon. Peter J. Wilson

Pursuant to Evidence Code sections 450 et seq., Plaintiffs PAMELA CARTER, DEBORAH MARTIN, CHRISTINE MORALES, STANLEY CARAKER, STANLEY NICKS, MICHAELA VECHT, BERT SCHORLING, JEANETTE BREITEN, RAYMOND BACHAR, KATHERINE MITCHELL, STEPHANIE CASTRO, BRUCE HINSLEY, ARLENE POUNDS ("Plaintiffs") requests that the Court take judicial notice of the following

records in support of Plaintiffs' Motion For Award of Attorney's Fees, Litigation Expenses, and Settlement Administration Costs.

1. A true and correct copy of the Order Granting Plaintiffs' Motion for Class Action Settlement and Motion for Attorney Fees, Litigation Expenses and Service Payments, dated February 28, 2018, issued by Judge James V. Selna, United States District Court- Central Distrct- Southern Division, in the matter *Pamela Carter, et. al. v. San Pasqual Fiduciary Trust Co., et. al.* (Case no. 8:15-cv-01507-JVS-JCG) (The "Federal Court Action Order"). The Federal Court Action Order is attached hereto as **Exhibit A**.

Plaintiffs request that the Court take judicial notice of the above document pursuant to California Evidence Code § 452(c), (d), and (h) and 453. This document represents an official act of a judicial department of the United States as well as a record of a court of record of the United States. Cal. Evid. Code § 452(c), (d); *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602. In addition, the document's existence is a fact that is not reasonably subject to dispute and is capable of immediate and accurate determination. Cal. Evid. Code § 452(h).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 6th day of March, 2019 at Santa Monica, California.

DATED: March 6, 2019 TRUJILLO & WINNICK, LLP

By: _____
Jeffrey T. Belton
Attorneys for Plaintiffs Pamela Carter, et al.

EXHIBIT A

REQUEST FOR JUDICIAL NOTICE

IN SUPPORT OF MOTION FOR ATTORNEY'S FEES, LITIGATION EXPENSES, AND SETTLEMENT ADMINISTRATION COSTS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 15-1507 JVS (JCGx)	Date	February 28, 2018
Title	Pamela Carter, et al. v. San Pasqual Fiduciary Trust Co., et al.		

Present: The Honorable	James V. Selna

Karla J. Tunis	Not Present
Deputy Clerk	Court Reporter

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (IN CHAMBERS) Order Granting Plaintiffs' Motion for Class Action Settlement and Motion for Attorney Fees, Litigation Expenses and Service Payments

Before the Court are two motions.

First, Plaintiffs Pamela Carter, Deborah Martin, Christine Morales, Stanley Caraker, Stanley Nicks, Michaela Vecht, Bert Schorling, Jeanette Breiten, Raymond Bachar, Katherine Mitchell, Stephanie Castro, Bruce Hinsley, Arlene Pounds, Jose Gurrola, Eldon Ross, and Aaron Straw ("Plaintiffs"), on behalf of themselves and the proposed class, move this Court for final approval of a proposed class action settlement ("Settlement"). (Mot., Docket No. 139). Specifically, Plaintiffs move this Court to (1) grant final approval of the Settlement; (2) require San Pasqual Fiduciary Trust ("San Pasqual") and William and Richard Davies ("Davies") (collectively "Defendants") to provide Simpluris, Inc. ("Simpluris) with settlement funds pursuant to the Stipulation of Settlement, and (3) direct Simpluris to make payments from the common fund as follows:

> 1) $338,534.00 to all class members that submitted claim forms prorata based on the number of shares they owned pursuant to the allocation plan described in the Stipulation of Settlement;
>
> 2) $500 to each Representative Plaintiff for service payments, except for Bruce Hinsley and Raymond Bachar

who shall each receive $1,500.00 ($10,000.00 total);

3) $10,607.00 to Simpluris for settlement administration costs;

4) $187,500 to Trujillo & Winnick, LLP for Attorneys' Fees;

5) $15,859.00 to Truijllo & Winnick, LLP for reimbursement of litigation expenses.

(Mem., Docket No. 139-1 at 14–15.)

Second, Plaintiffs filed a separate motion for attorneys' fees and service payments for named plaintiffs. (Mot., Docket No. 117.)

For the reasons stated below, the Court **grants** both motions.

BACKGROUND

I. Factual and Procedural Background

The background of this cases is well-known to the parties and detailed in the Court's order granting preliminary approval. (See Order, Docket No. 116.) The Court restates the underlying facts and procedural background as necessary to support its order.

The claims in this case arise from the redemption of Plaintiffs' and other class members' Fleet Card Fuels ("FCF") Employee Stock Ownership Plan ("ESOP") for approximately $2.74 per share on September 28, 2012. Plaintiffs allege that they did not receive adequate consideration for their ESOP shares when the redemption transaction was approved by San Pasqual. Plaintiffs filed this action on September 17, 2015, against Defendants[1] for alleged breach of fiduciary duties. (Comp., Docket No.

[1] A settlement has been reached with a former defendant in this case, Strategic Equity Group ("SEG"), in the California state court action. (Mot., Docket No. 112 at 3). FCF filed a Petition in

1). The Davies and San Pasqual allege that they did not breach any fiduciary obligations owed to the Plaintiffs or other class members. The parties reached this Settlement after two rounds of mediation. (See Mot., Docket No. 112 at 4-5).

II. Summary of the Settlement

A. Settlement Class

Pursuant to the settlement agreement, the proposed class consists of all persons who were participants in the FCF ESOP as of September 28, 2012. The Defendants and their affiliates, the officers and directors of any Defendants or of any entity in which a Defendant has a controlling interest, and the legal representatives, successors, and assigns of any such excluded persons are excluded from the proposed class. (Stip., Docket No. 113 at ¶ 3).

B. Settlement Terms

The total settlement amount is five hundred sixty-two thousand five hundred dollars ($562,500) (the "Gross Settlement Amount"). (Id. at ¶ 31). That amount consists of three hundred twelve thousand five hundred dollars ($312,500) to be paid by San Pasqual and two hundred fifty thousand dollars ($250,000) to be paid by the Davies. (Id.) After deducting court-approved amounts for attorneys' fees, costs, service payments, and settlement administration costs from the Gross Settlement Amount, the Net Settlement Amount will be paid to class members who submit valid and timely claim forms. (Id.) Specifically, the following payments will be made from the Gross Settlement Account: (a) Class Counsel's reasonable attorneys' fees in an amount not to exceed one-third of the Gross Settlement Amount (not to exceed one hundred eighty seven thousand five hundred dollars ($187,500)); (b) Class Counsel's reasonable litigation costs, not to exceed twenty-five thousand dollars ($25,000); (c) a service payment to the representative plaintiffs not to exceed five hundred dollars ($500) for each representative plaintiff, except for Bruce Hinsley and Raymond Bachar who will each receive a payment of one thousand five hundred dollars ($1,500); and (d) the reasonable costs of the settlement administrator not to exceed ten

Bankruptcy and the Bankruptcy Trustee abandoned its claims arising out of this action. (Stip., Docket No. 113 at ¶ 17). FCF is released pursuant to the settlement agreement. (Id.)

thousand dollars ($10,000). (Id.) If a class member opts out of the settlement, that class member must submit a valid and timely exclusion and that class member's proportionate share of the Net Settlement Amount will be returned to Defendants. (Id. at ¶ 36(d)). If fifteen or more class members opt out, either Defendant may terminate the Settlement. (Id. at ¶ 58). If both Defendants terminate the Settlement, it is null and void. (Id.) For any funds remaining of class members who submit claim forms but have not received their settlement check, those funds will be forwarded in the name of the class member to the State of California, Controller – Unclaimed Property Division. (Id. at ¶ 93).

III. Preliminary Approval

On August 28, 2017, the Court (1) granted preliminary approval of the Settlement Agreement,(2) directed dissemination of notice to the settlement class, (3) appointed Simpluris as the Claims Administrator, and (4) appointed Trujillo & Winnick, LLP ("Trujillo &Winnick") as Class Counsel for settlement purposes only. (See Order, Docket No. 116.)

IV. Notice

On September 5, 2017, Simpluris received the Court-approved Notice of Class Action Settlement, Claim Form, and Exclusion Form ("Notice Packet"). (Declaration of Norman Alcantara ("Alcantara Decl."), Docket No. 139-4 ¶ 5.) The same day, Trujillo & Winnick provided Simpluris with "a mailing list ('Class List') containing Class Members' names, most recent mailing address, telephone members for some class members, social security numbers, and pertinent ESOP information for each Class Member." (Id. ¶ 6.) Simpluris updated the mailing addresses contained in the Class List using the National Change of Address Database. (Id. ¶ 7.) On October 2, 2017, Simpluris mailed Notice Packets to one-hundred and fifty-five (155) class members. (Id. ¶ 8.) Any Notice Packets that were returned by the United States Postal Service as undeliverable and without a forwarding address were resent after Simpluris performed a skip trace to locate a current address. (Id. ¶ 9.) Simpluris resent thirty (30) Notice Packets after performing skip traces. (Id.) Additionally, Simpluris resent twenty-nine (29) Notice Packets at the request of Class Members and Trujillo & Winnick. (Id.) Ultimately, no Notice Packets were undeliverable. On December 1, 2017, Simpluris mailed ninety-five (95) Reminder Postcards to Class

Members who had not submitted a Claim Form. (Id. ¶ 10.) Six of those Class Members submitted a Claim Form. (Id.) On December 15, 2017, Simpluris made reminder phone calls to the remaining eighty-nine (89) Class Members who had not submitted a Claim Form. (Id. ¶ 11.) Of those, eighteen (18) submitted Claim Forms. (Id.)

In total, eighty-four (84) Class Members submitted a valid Claim Form. (Id. ¶ 12.) This represents a response rate of 54.19%. (Id.) The 84 Class Members that submitted claim forms owned 156,326.4313 shares out of a total number of 208,241.0124 eligible shares. (Id.) The 54.19% of Class Members who responded represent 75.03% of the shares. (Id.)

V. Objections/Exclusions

Simpluris received no objections to the Settlement. (Id. ¶ 17.) Simpluris also received no requests for exclusion. (Id. ¶ 16.)

DISCUSSION

I. Class Certification

Rule 23(a) imposes four prerequisites for a class action: (1) the class is so numerous that a joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a); United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v. ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010).

Under Rule 23(b), a plaintiff must show (1) that common factual and legal issues predominate over individual questions and (2) that a class action is the best method to resolve the class claims. Fed. R. Civ. P. 23(b)(3). There are several relevant factors to consider during this analysis: (1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation of

the claims in the particular forum, and (4) the likely difficulties in managing a class action. Id. 23(b)(3)(A)–(D).

The Court preliminarily certified the proposed class in its prior order. (Order, Docket No. 116 at 4–7.) Nothing has changed in the interim that would warrant a deviation from the Court's prior ruling. Therefore, for the reasons specified in its preliminary approval order, the Court certifies the settlement class for final approval of the settlement agreement.

II. Approval of Class Settlement

Rule 23(e) requires court approval for class-action settlements. Fed. R. Civ. P. 23(e). A court considers several factors to determine whether a proposed settlement is fair, adequate, and reasonable. These include:

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

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) (quoting Churchill Vill., L.L.C. v. Gen. Elec., 361 F.3d 566, 575 (9th Cir. 2004)).

The Court analyzes the applicable factors, and it finds that the proposed settlement agreement is fair, adequate, and reasonable.

A. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

"An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221

F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). However, "a proposed settlement is not to be judged against a speculative measure of what might have been awarded in a judgment in favor of the class." Id.; see also Officers for Justice v. Civil Serv. Comm'n of the City and Cty. of San Francisco, 688 F.2d 615, 625 (9th Cir.1982) ("Neither the trial court nor [the appellate court] is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements."). A second relevant factor "is the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010).

These factors support final settlement approval. First, the strength of Plaintiffs' case supports final approval. Although Plaintiffs maintain a belief in the merits of their claims, they recognize that there are substantial risks involved in continuing this litigation. (See Mem., Docket No. 139-1 at 9.) Class certification is an uncertainty because Defendants have argued throughout the case that class certification would be a significant hurdle. (Id. at 8.) Specifically, in opposing Plaintiffs' motion for class certification, Defendants argued against class certification under Federal Rule of Civil Procedure 23(b)(1)(A), 23(b)(1)(B), and 23(b)(3). (See generally Opp'n, Docket No. 97.) Additionally, they argued that Plaintiffs lacked Article III standing. (Id.) Moreover, Defendants argued that their actions fully complied with the Employee Retirement Income Security Act ("ERISA"), and that Plaintiffs could not show any loss in value of their shares was caused by Defendants' actions. (Mem., Docket No. 139-1 at 9.) They also indicated that they intended to file motions for summary judgment, which could result in an award of attorneys' fees against Plaintiffs under ERISA's fee shifting provisions. (See Docket No. 69.)

Second, the litigation's complexity, risk, and duration all favor approval. This litigation has been ongoing since 2015. (See Docket No. 1.) In that time period, Defendants filed multiple motions to dismiss, and Plaintiffs filed a class certification motion. Both parties experienced success and failure on these motions, though the Court never ruled on the class certification motion, in light of the settlement negotiations. Additionally, Plaintiffs claim that "[i]f the Settlement is not approved, the parties would be facing years of additionally litigation and

appeals, with the possibility that the class members would ultimately receive nothing for their claims." (Mem., Docket No. 139-1 at 8–9.) The cases's extensive litigation history shows that the parties both still faced significant risks from case's complexity and likely further duration.

Therefore, these factors weigh in favor of final approval.

B. Amount Offered in Settlement

"It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 459 (9th Cir. 2000) (quoting Officers for Justice, 688 F.2d at 628). As a result, district courts should not judge a settlement "against a hypothetical or speculative measure of what might have been achieved by the negotiators." In re Toys R Us-Delaware, Inc.–Fair & Accurate Credit Transactions Act (FACTA) Litig., 295 F.R.D. 438, 453 (C.D. Cal. 2014) (quoting Officers for Justice, 688 F.2d at 625). Instead, courts should consider the settlement in conjunction with "factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." Id.

The amount offered in settlement also strongly favors final approval. On September 28, 2012, all the outstanding ESOP shares were redeemed for $600,000 or approximately $2.78 per share. (Mem., Docket No. 139-1 at 10.) During settlement negotiations, Plaintiffs argued that Defendants could have potential exposure of approximately $1.6 million based on the latest analysis performed by SEG before the redemption, which valued the shares at approximately $10.32 per share.[2] (Declaration of Jeffery T. Belton ("Belton Decl.,"), Docket No. 139-2 ¶ 16.) Defendants argued that the $600,000 already paid represented the shares' fair market value. (Mem., Docket No. 139-1 at 10.) The settlement of $562,500 represents approximately 35% percent of the Defendants' potential exposure, and

[2] The total potential exposure of approximately $1.6 million is based on the $10.32 valuation minus the $2.78 the shares were actually redeemed for, multiplied by the approximately 208,000 shares owned by the class members ($10.32 less $2.78 = $7.54 per share owed to class members multiplied by 208,000 shares = $1,568,320). (Belton Decl., Docket No. 139-2 ¶ 16.)

nearly doubles the amount Class Members received for their shares. (Belton Decl., Docket No. 139-2 ¶ 17.) The settlement provides for an additional amount of approximately $2.70 per share. (Id.) It also does not include the $100,000 settlement the class will also receive from SEC in the state court case. (Id.) With that amount, Class Members will receive an additional $3.18 per share, more than double what they were initially paid for their shares. (Id.)

For the 84 Class Members that submitted Claim Forms, the average gross settlement will be approximately $6,696. (Id. ¶ 22.) If the Court approves all requested costs and fees, the average net settlement will be approximately $4,030. (Id.) In conclusion, this factor weighs toward final approval.

C. Extent of Discovery Completed and the Stage of the Proceedings

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case. The more the discovery completed, the more likely it is that the parties have "a clear view of the strengths and weaknesses of their cases." In re Toys R Us-Delaware, 295 F.R.D at 454 (internal quotation marks omitted). Likewise, mediation suggests that the parties know their relative strengths and weaknesses. See id. at 455.

Here, the parties have litigated this case for years, conducted extensive discovery, and reached their settlement as the result of mediation. The parties conducted extensive discovery, including significant written discovery, third-party discovery, the exchange of information through mediation, and depositions in the related state court case. (Belton Decl., Docket No. 139-2 ¶¶9–12.) San Pasqual served two sets of requests for production, totaling 58 requests; and one set of interrogatories, totaling 20 requests. (Id. ¶ 12.) The Davies served seventeen sets of requests for production on Plaintiffs, both collectively and individually, totaling 802 requests; and sixteen sets of interrogatories, totaling 208 requests. (Id.) In addition, the parties engaged in two mediation sessions. (See id. ¶¶ 14–15.) Although they did not settle in either mediation, they continued discussions and subsequently reached an agreement. (Id. ¶ 15.) Such negotiations further suggest that the settlement is fair, reasonable, and adequate. Accordingly, the Court finds that this factor weighs in favor of final approval.

D. Experience and Views of Counsel

Plaintiffs are represented by experienced counsel with expertise in litigating class actions and mass tort cases in both federal and state court. (See id. ¶¶ 3–7.) Class Counsel believes the Settlement is fair, reasonable, and in the best interests of the class members. (Id. ¶ 23.) Therefore, given counsel's experience in handling similar matters and the extent of discovery and motion practice completed, the Court finds that counsel's belief that settlement is fair, reasonable, and in the best interests of the Class should be given significant weight. See Vasquez, 266 F.R.D. at 490 ("Here, class counsel understood the complex risks and benefits of any settlement and concluded that the proposed Settlement was a just, fair, and certain result. This factor weighs in favor of approval.").

E. The Presence of a Governmental Participant

No governmental entity is present in this litigation. Pursuant to 28 U.S.C. § 1715, the U.S. Attorney General and four other government officials were notified about the settlement (the "CAFA notice"). No government agency has responded to the CAFA notice and the 90-day period prescribed by 28 U.S.C. § 1715(d) has expired. (Belton Decl., Docket No. 140 ¶ 4.) Accordingly, this factor does not apply in this case. See In re Toys R Us-Delaware, 295 F.R.D. at 455 (factor does not apply in absence of government participant).

F. Reaction of the Class Members to the Proposed Settlement

"It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." Nat'l Rural Telecomms. , 221 F.R.D. at 529 (C.D. Cal. 2004) (citations omitted).

Here, Simpluris mailed Notice Packets to 155 class members. (Id. ¶ 8.) Simpluris received no objections to the Settlement. (Id. ¶ 17.) Simpluris also received no requests for exclusion. (Id. ¶ 16.) Therefore, this factor strongly weighs in favor of final approval.

Overall, the weight of the factors supports the Court's conclusion that the

settlement is fair, reasonable, and adequate. The Court next addresses the notice program and plan of allocation.

III. Plan of Allocation

Assessment of a plan of allocation of settlement proceeds in a class action under Federal Rule of Civil Procedure 23 is governed by the same standards of review applicable to the settlement as a whole—the plan must be fair, reasonable, and adequate. See Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1284–85 (9th Cir. 1992). "A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable." In re Oracle Sec. Litig., No. C-09-0931-VRW, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994).

The Settlement provides the following allocation plan:

> After deducting from the total of the Gross Settlement Amount the Court-approved amounts for Class Counsel's fees and costs, the service payments to the Representative Plaintiffs, and the settlement administration costs incurred by the Settlement Administrator, the total of the Net Settlement Amount shall be paid out in full to the Participating Class Members, based on the number of shares owned by Participating Class Members at the time the shares were redeemed pursuant to the redemption agreement.

(Stip., Docket No 113 ¶ 36(b)). Therefore, the plan reimburses Class Members based on the number of shares they own, and it is fair, reasonable, and adequate.

IV. Notice

Rule 23(c)(2)(B) requires that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires that a proposed settlement may only be approved after notice is directed in a reasonable manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1).

In its preliminary approval order, the Court approved the notice sent to potential class members. (Order, Docket No. 322 at 13–15.) Since receiving preliminary approval, Simpluris mailed Notice Packets to one-hundred and fifty-five (155) class members. (Alcantara Decl., Docket No. 139-4 ¶ 8.) Simpluris resent thirty (30) Notice Packets after performing skip traces. (Id. ¶ 9.) Additionally, Simpluris resent twenty-nine (29) Notice Packets at the request of Class Members and Trujillo & Winnick. (Id.) Ultimately, no Notice Packets were undeliverable. On December 1, 2017, Simpluris mailed ninety-five (95) Reminder Postcards to Class Members who had not submitted a Claim Form. (Id. ¶ 10.) Six of those Class Members submitted a Claim Form. (Id.) On December 15, 2017, Simpluris made reminder phone calls to the remaining eighty-nine (89) Class Members who had not submitted a Claim Form. (Id. ¶ 11.) Of those, eighteen (18) submitted Claim Forms. (Id.) In total, eighty-four (84) Class Members submitted a valid Claim Form. (Id. ¶ 12.) This represents a response rate of 54.19%. The Court therefore finds that notice to the settlement class was adequate.

V. Class Representative Service Payments

Courts have discretion to issue incentive awards to class representatives. Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958–59 (9th Cir. 2009). The awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Id. An unreasonable incentive award may indicate that a settlement was reached through fraud of collusion. Staton v. Boeing Co., 327 F.3d 938, 975 (9th Cir. 2003).

Courts evaluate incentive awards relative to named plaintiff's efforts, considering "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation." Id. at 977 (alterations in original) (quoting Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998)). Courts also compare the incentive awards to the total settlement by looking at "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." In re Online

DVD-Rental Antitrust Litig., 779 F.3d 934, 947 (9th Cir. 2015) (quoting Staton, 327 F.3d at 977).

Here, the Settlement Agreement provides for aggregate service award payments to the eighteen named plaintiffs of $10,000. (Belton Decl., Docket No. 118 ¶ 52.) Class Counsel seeks a service award in the amount of $1,500 for Bruce Hinsley and Raymond Bachar and service awards of $500 for the other named plaintiffs. (Id. ¶ 51.) Class Counsel argues that these awards are necessary to compensate named Plaintiffs who were subject to significant discovery, and without whom there would be no class recovery. (Id. ¶¶ 52–56; Mem., Docket No. 117-1 at 23.)

In its Court's Order granting preliminary approval of the Settlement's incentive payment structure, the Court determined that the requested service payments may be reasonable "if, before final approval of service payments, the representative plaintiffs provide evidence that they spent significant time assisting the prosecution of the action." (Order, Docket No. 116 at 11.) In response, Plaintiffs submitted declarations from the named plaintiffs in support of its motion for attorneys' fees, litigation expenses, and service payments. (See Docket Nos. 123–138.) All of the sixteen class representatives gave an estimated number of hours he or she spent on the lawsuit. The estimates ranged from 20 hours to 3 hours. It appears that all Plaintiffs stepped forward and risked having to potentially sit for a deposition and travel to Santa Ana, California, for trial. In addition, Plaintiffs also communicated with Class Counsel throughout the lawsuit, reviewed documents, provided input, and kept apprised of litigation developments. Finally, Bruce Hinsley and Raymond Bachar traveled from Bakersfield, California, to Downtown Los Angeles, at their own expense, to participate in an all-day mediation, at the request of the mediator. (Belton Decl., Docket No. 118 ¶ 55.)

The payment constitutes 1.78 percent of the gross settlement fund, which is higher than what some courts have approved. See, e.g., Sandoval v. Tharaldson Employee Mgmt., Inc., No. EDCV 08-482-VAP(OP), 2010 WL 2486346, at *10 (C.D. Cal. June 15, 2010) (collecting cases and concluding that plaintiff's request for an award constituting one percent of the settlement fund was excessive). But the Court determines that this is reasonable given the amount of the recovery and significant number of named Plaintiffs. In Staton, the Ninth Circuit reversed an

incentive award that averaged sixteen times what each unnamed class member received. 327 F.3d at 975. In contrast, given that the average net award is $4,030, a $500 or $1,500 incentive payment is not unreasonable.

Thus, the Court finds that the service award payments in the amount of $500 and $1,500 are fair, adequate, and reasonable.

VI. Attorneys' Fees and Costs

A. Fees

A court may award reasonable attorneys' fees and costs in certified class actions where they are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). A lawyer who recovers "a common fund for the benefit of persons other than himself or his client" is entitled to reasonable attorney fees from the fund as a whole. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980); Staton, 327 F.3d at 967. Even when parties have agreed to a fee award, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable[.]" In re Bluetooth, 654 F.3d at 941. In common fund cases, the Ninth Circuit requires district courts to assess fee awards using either the "percentage of the fund" method or the "lodestar" method. Fischel v. Equitable Life Ass. Soc'y of the U.S., 307 F.3d 997, 1006 (9th Cir. 2002). Moreover, courts routinely cross-check their "percentage of the fund" calculation with the lodestar method to ensure that class counsel is not overcompensated. Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002).

Using the "percentage of the fund" method, the Court awards class counsel attorney's fees in the amount of $187,500.00, based on an award of 33.3%.

1. Percentage of the Fund

In the Ninth Circuit, the benchmark for fee awards in common fund cases is 25% of the common fund. In re Bluetooth, 654 F.3d at 942 ("Where a settlement produces a common fund for the benefit of the entire class, . . . courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record for any 'special circumstances' justifying a

departure."). The percentage may be adjusted according to several factors, including: (1) the results achieved; (2) the risk involved in undertaking the litigation; (3) the generation of benefits beyond the cash settlement fund; (4) the market rate for services; (5) the contingent nature of the fee; (6) the financial burden to counsel; (7) the skill required; (8) the quality of the work; and (9) the awards in similar cases. Vizcaino, 290 F.3d at 1048–49; Six Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990).

Here, Plaintiffs' counsel seek an award of 33.33% (one third of the common fund)–an amount above the Ninth Circuit's established benchmark. "[C]ourts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions" In re Heritage Bond Litig., No. 02-ML-1475, 2005 WL 1594403, at *19, 19 n.14 (C.D. Cal. June 10, 2005) (collecting cases). Plaintiffs' counsel contend that an increased award is appropriate in this case. For the following reasons, the Court agrees.

a. Results Achieved

"The result achieved is a significant factor to be considered in making a fee award." Id. (citing Hensley v. Eckerhart, 461 U.S. 424, 436 (1983)); Vizcaino, 290 F.3d at 1048 ("Exceptional results are a relevant circumstance."); In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) ("The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award."). The Court found that the settlement is fair, adequate, and reasonable. Class Counsel secured a settlement of $562,500 for the benefit of the class, with an average net payment of $4,030. The Court finds that, overall, the result weighs in favor of the requested award.

b. Risks Involved

Another significant factor to be considered in determining attorney fees is the risk that counsel took of "not recovering at all, particularly [in] a case involving complicated legal issues." In re Omnivision Techs., 559 F. Supp. 2d at 1046–47; Vizcaino, 290 F.3d at 1048; In re Heritage Bond, No. 02-ML-1475, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005) ("The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of costs, is a factor in

determining counsel's proper fee award."). As explained above, Plaintiffs undertook significant risks in pursuing this litigation. Thus, there always was a likelihood that Plaintiffs would recover nothing. Therefore, this factor supports the requested award.

c. Skill of Counsel and Contingent Fees

"The single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." Id., at *12 (quoting Cullen v. Whitman Med. Corp., 197 F.R.D. 136, 149 (E.D. Pa. 2000)). Class Counsel has competently litigated this case, diligently investigating and developing the claims. The settlement was not reached lightly, but after years of litigation. Cf. Navarro v. Servisair, No. C 08–02716 MHP, 2010 WL 1729538, at *3 (N.D. Cal. Apr. 27, 2010) (finding proposed award of 30 percent of settlement fund unjustifiably departed from benchmark due in part to speed with which parties reached a settlement). Therefore, this factor supports the requested award.

Attorneys also are entitled to a larger fee award when their compensation is contingent in nature, as here. See Vizcaino, 290 F.3d at 1048–50; see also In re Omnivision Techs., 559 F. Supp. 2d at 1047. "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases." In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1299 (9th Cir. 1994). Therefore, this factor also supports the requested award.

d. Results in Similar Cases

The requested fee is generally in line with awards made in similar sized common fund class actions litigated in California. See, e.g., Vasquez, 266 F.R.D. at 492 (detailing cases awarding one-third of common fund and awarding counsel one-third of common fund in case with total recovery of $300,000); see also Craft v. Cty. of San Bernardino, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) (noting that cases of under $10 million often result in fees about 25%). Therefore, this factor supports the requested award.

e. Reaction of the Class

The Court may also consider the reaction of the class to the proposed fee award. In re Omnivision Techs., 559 F. Supp. 2d at 1048; In re Heritage Bond, 2005 WL 1594389, at *15 ("The presence or absence of objections from the class is also a factor in determining the proper fee award."). There were no objections or exclusions. Therefore, this factor supports the requested award.

In sum, the Court finds that the factors in this case support Class Counsel's requested attorneys' fees award. The Court will next perform a lodestar cross-check to ensure the reasonableness of the percentage award.

2. Lodestar Cross-Check

"Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." Vizcaino, 290 F.3d at 1050; In re Omnivision Techs., 559 F. Supp. 2d at 1048. As noted above, the Ninth Circuit encourages courts to cross-check the reasonableness of a fee award determined using the percentage method with the lodestar method. The asserted lodestar for Class Counsel is $332.471.44. (Belton Decl., Docket No. 118 ¶ 5.) Class Counsel spent over 867 hours on this litigation. (Id.) The following chart shows the hourly rates:

Name and Title	Hours	Hourly Rate	Lodestar
Anthony Trujillo (Partner)	242.0	$400	$96,800.00
Alex Winnick (Partner)	290.7	$350/375[3]	$105,321.94
Jeffrey Belton (Partner)	259.7	$475	$123,200.75
Stephanie Belton (Paralegal)	75.25	$95	$7,148.75
Total	867.25		$332,471.44

[3] Attorney Winnick's billing increased on June 1, 2016, from $350.00 to $375.00. (See Declaration of Alexander H. Winnick ("Winnick Decl."), Docket No. 119 ¶¶ 7–9.)

(Id.) The requested fee is only a fraction of the lodestar: 56%.[4] Therefore, the multiplier here, 0.56, is well below the lodestar.

"The first step in the lodestar analysis requires the district court to determine a reasonable hourly rate for the fee applicant's services. This determination [involves] examining the prevailing market rates in the relevant community charged for similar services by lawyers of reasonably comparable skill, experience, and reputation." Cotton v. City of Eureka, 889 F. Supp. 2d 1154, 1166 (N.D. Cal. 2012) (internal quotation marks and citation omitted); see also Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 979 (9th Cir. 2008). "The fee applicant has the burden of producing satisfactory evidence . . . that the requested rates are in line with those prevailing in the community." Jordan v. Multnomah Cnty., 815 F.2d 1258, 1263 (9th Cir. 1987). The fee applicant may provide affidavits from the attorneys who worked on the present case, as well as affidavits from other area attorneys or examples of rates awarded to counsel in previous cases. See Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 262 (N.D. Cal. 2015); see also Parkinson v. Hyundai Motor Am., 796 F. Supp.2d 1160, 1172 (C.D. Cal. 2010) ("Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates."). Here, class counsel contend that their hourly rates are consistent with their experience and in line with prevailing market rates. (Mot., Docket No. 117-1 at 17–18.) Class counsel provide detailed information regarding their positions, experience levels, and locations, as well as the customary rates charged. (See Belton Decl., Docket No. 118 ¶¶ 26–33; Winnick Decl., Docket No. 119 ¶¶ 3–8; Declaration of Anthony W. Trujillo ("Trujillo Decl."), Docket No. 120 ¶¶ 4–8, 10.) They also provide a detailed list of fee awards in similar cases in this district and a declaration from another attorney, who has been practicing for less time than Class Counsel and was awarded an hourly rate of $650, in this District, in June 2015. (Belton Decl., Docket No. 118 ¶¶ 36–41; Declaration of Alexander R. Wheeler ("Wheeler Decl."), Docket No. 121 ¶ 5.) Thus, the Court finds the hourly rates between $475 and $95 reasonable.

Next, the Court examines whether the number of hours class counsel expended on the litigation was reasonable. Class Counsel has been involved in the

[4] The fraction is calculated as follows: $187,500 (total fees requested) divided by $332,471.44 (total lodestar) = 56%.

litigation since June 2015. (Belton Decl., Docket No. 118 ¶ 3.) To calculate the Lodestar, Class Counsel reviewed all timekeeping records to ensure none were erroneous, duplicative, excessive or administrative, and cut the house as a result. (Id.) They did not bill travel time, and they removed hours spent litigating issues relating to the claims against SEG. (Id.) Therefore, the Court finds that the number of hours expended was reasonable.

Furthermore, numerous courts have suggested that an award is probably reasonable if it is below the lodestar. See, e.g., In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467, 515 (S.D.N.Y. 2009); Aichele v. City of L.A., No. CV 12-10863-DMG (FFMx), 2015 WL 5286028, at * 7 (C.D. Cal. Sep. 9, 2015). Here, Plaintiffs request an award more than $144,000 less than its attested lodestar. This suggests that the fee award is reasonable.

Accordingly, on balance, the Court finds that awarding one-third of the Settlement Amount in attorneys' fees is justified. The Court awards Class Counsel $187,500.00 in attorneys' fees.

B. Costs

"Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters." In re Omnivision Techs., 559 F. Supp. 2d at 1048. Class Counsel attests that it incurred expenses in the amount of $15,589.00. (Belton Decl., Docket No. 318 ¶¶ 9–10.) Class Counsel states that the expenses were for court reporters for mediation fees, filing and service fees, postage charges, copy charges, legal research, and an accounting expert. (Id.) Class Counsel provides adequate documentation of these expenses in Class Counsel's declaration and an accompanying spreadsheet of costs. (See id.; Belton Decl., Docket No. 118-5, Ex. 5.). Therefore, the Court awards $15,589.00 for reimbursement of reasonable expenses.

CONCLUSION

For the foregoing reasons, the Court **grants** final approval of the class settlement, attorneys' fees and costs, and class representative service awards.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 15-1507 JVS (JCGx) Date February 28, 2018

Title Pamela Carter, et al. v. San Pasqual Fiduciary Trust Co., et al.

IT IS SO ORDERED.

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