UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CURTIS MARKSON et al., Plaintiffs, v. CRST INTERNATIONAL, INC. et al., Defendants.	Case No. 5:17-cv-01261-SB-SP ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT (Dkt. No. 610) AND PARTIALLY GRANTING MOTION FOR ATTORNEYS' FEES AND COSTS (Dkt. No. 609)

Plaintiffs Curtis Markson, Mark McGeorge, Clois McClendon, and Eric Clark are commercial truck drivers who have worked for some of the Defendants in this case. In May 2017, Markson and McGeorge filed this class action against Defendants CRST International, Inc. and CRST Expedited Inc. (together, CRST) alleging unlawful deductions from their pay. Dkt. No. 1-1. The litigation expanded over the years, and the operative Fourth Amended Complaint now alleges federal and state antitrust claims against CRST and seven other Defendants—C.R. England, Inc. (CRE), Western Express (Western), Schneider National Carriers, Inc. (Schneider), Southern Refrigerated Transport, Inc. (Southern), Covenant Transport, Inc. (Covenant), Paschall Truck Lines, Inc. (Paschall), and Stevens Transport, Inc. (Stevens)—and a variety of state law claims against CRST. Dkt. No. 228. Plaintiffs settled with all Defendants except CRST and CRE. The Court conditionally certified a class and preliminarily approved the settlements in two separate orders: on February 24, 2022 as to Paschall, Schneider, Covenant, Southern, and Western; and on April 6, 2022 as to Stevens, which settled after the other Defendants. Dkt. Nos. 562, 590. Plaintiffs now move for

final approval of the class settlements, Dkt. No. 610, and for an award of attorneys' fees, costs, and incentive awards, Dkt. No. 609. No Defendants have filed oppositions,[1] and no class members have objected. The Court held a hearing on July 29, 2022, and now concludes that the settlement and the requested award of attorneys' fee and litigation costs (as modified in Plaintiffs' supplemental request) should be approved and that incentive awards should be allowed in a reduced amount.

I. PROPOSED SETTLEMENT TERMS

The settlement is composed of five separate agreements, found at Dkt. Nos. 537-3 (Paschall), 537-4 (Schneider), 537-5 (Covenant and Southern[2]), 537-6 (Western), and 564-3 (Stevens). The first four agreements were later modified by stipulation to excise non-cooperation agreements that the Court found problematic. Dkt. No. 554. The current agreements all contain similar terms, and it appears that the differences among them are generally immaterial to the Court's analysis. The Court therefore cites only the Paschall settlement as a representative example, except where differences are material.

Class Definition: The settlement class consists of the following:

> [A]ll current and former motor drivers "Under Contract" as motor vehicle carrier drivers with CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., and/or Stevens Transport, Inc., at any time from May 15, 2013 through the Preliminary Approval Date. Excluded from the Settlement Class are officers, directors, senior executives, employees of Defendants who

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[1] The non-settling Defendants opposed preliminary approval of the settlement but have not raised any objections to final approval, which no longer implicates some of the concerns they raised.

[2] Southern and Covenant are related companies that are both part of the Covenant Logistics Group, and Southern ceased operations during this litigation. Dkt. No. 537-2 ¶ 16.

> are not motor vehicle carrier drivers, and personnel in human resources and recruiting departments of the Defendants in this Action.

Dkt. No. 537-3 at 4. The Paschall settlement agreement defines "Under Contract" as

> all natural persons in the United States who executed an agreement with any Defendant in which the person agreed to work for any of the Defendants for a specified period of time in return for training provided by, funded, or reimbursed by that Defendant and who was employed by that Defendant between May 15, 2013 through the Preliminary Approval Date.

Id. at 5. The definitions of "Under Contract" vary slightly among the different settlement agreements, but Plaintiffs represent that they are "functionally equivalent." Dkt. No. 610-1 at 2 n.1. Indeed, the Court's two preliminary approval orders addressed slightly different class definitions, which the Court noted did not materially affect its analysis, accepting counsel's representation that changed language accounted for variations in Defendants' training programs and contracts. Dkt. No. 590 at 3 & n.2. These phrasing differences do not appear to have caused any difficulty in identifying and notifying the class members.

Class Benefits: The settling Defendants have agreed to nonreversionary payment of gross settlement funds totaling $9,750,000: $700,000 from Paschall; $750,000 from Schneider; $800,000 from Covenant and Southern, together; $2 million from Western; and $5.5 million from Stevens. Dkt. Nos. 537-3 at 10, 537-4 at 10, 537-5 at 11, 537-6 at 10, and 564-3 at 12–13. The settlement fund will be used to pay (1) costs of class notice and administration of the settlement fund, (2) any incentive awards to the named Plaintiffs, and (3) any attorneys' fees and litigation expenses awarded by the Court, with the remainder paid to class members. *E.g.*, Dkt. No. 537-3 at 10. As discussed further below, Plaintiffs request $2,437,500 in attorneys' fees, $2,895,543.98 in litigation costs, and $100,000 in incentive awards. Plaintiffs' motion and proposed order also include $252,650 in settlement administration costs to be paid to JND Legal Administration LLC, the settlement administrator (JND). Dkt. Nos. 610 at 3, 610-4 at 4. Although neither the briefing nor the supporting evidence addresses this figure, the Court construes it as the maximum administrative costs that may be deducted from the settlement fund. If allowed in full, the deductions requested by Plaintiffs would leave $4,064,306.02

to distribute to the class members. Plaintiffs' motion does not address how the money will be allocated among class members, but the class notice indicated that payments would be made based upon the number of weeks each class member worked for Defendants, Dkt. No. 610-3 at 10 of 10, and counsel confirmed this at the hearing. This allocation method is appropriate given the nature of Plaintiffs' antitrust claims, which allege that the class members' wages were suppressed by Defendants' anticompetitive acts, and the impracticability—as credibly explained by multiple counsel at the hearing—of identifying the hours worked by each class member and allocating payments on that basis.

The settlement agreements also provide non-monetary relief to Plaintiffs, including that Defendants (1) will not send "under contract" letters to other Defendants concerning the class members, (2) will not sue any of the Defendants for hiring any class member based on his or her "under contract" status, (3) will adopt an express policy that prohibits refusing to hire a driver based on "under contract" status, and (4) will release entitlement to and discontinue collection efforts as to any debts allegedly owed by class members for unpaid costs relating to Defendants' trucking school programs. *E.g.*, Dkt. No. 537-3 at 14.

Attorneys' Fees, Costs, and Incentives Awards: The settlement agreements provide that Plaintiffs' counsel may apply for an award of attorneys' fees not to exceed one-third of the benefits created for the settlement class, reimbursement of counsel's fees and expenses in prosecuting the class action, and incentive awards of up to $25,000 for each named Plaintiff. *Id.* at 18–19.

Release: The settlement agreements provide that the settling class members completely release and forever discharge "any and all claims, demands, actions, suits, [or] causes of action under any federal, state or local law of any jurisdiction in the United states" that "aris[e] our of any conduct that was or could have been alleged in the Complaints or any act or omission" concerning the settling Defendants' participation in a conspiracy not to hire drivers "under contract" with another Defendant. *Id.* at 8–9. Any class member who does not elect to be excluded from the settlement class will be bound by the release. *Id.* at 4.

II. NOTICE AND PROCEDURAL REQUIREMENTS

The Court conditionally certified the class for settlement purposes, Dkt. Nos. 562, 590, and subsequently approved the parties' proposal for providing notice to class members, finding that it "meets the requirements of due process and provides the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto," Dkt. No. 602 at 2. The class settlement administrator, JND, reviewed the records provided by Defendants, identified 122,664 unique class members, and mailed the Court-approved postcard notices to those members at 123,853 distinct addresses (including multiple addresses for some class members). Dkt. No. 610-3 at 2–3. 18,885 notices were returned to JND as undeliverable, and 3,028 notices were forwarded to updated addresses by the postal service. JND conducted further research on the undelivered notices and mailed new notices to the 13,347 class members for whom it was able to obtain updated address information. *Id.* at 3. Only 102 of those notices were returned to JND as undeliverable. *Id.* JND also sent Court-approved email notices to 111,696 email addresses, of which 5,246 were undeliverable. *Id.* Finally, JND established a dedicated website and a case-specific toll-free telephone number to provide information on the settlement. *Id.* at 4. The website has been visited by at least 6,755 unique users and the toll-free number has received more than 3,300 calls. *Id.* The Court finds that this notice complies with the requirements of Rule 23 and due process.

Defendants provided notice of the settlement to the appropriate state and federal agencies on December 16, 2021, March 11, 2022, and April 28, 2022, Dkt. No. 610-2 at 4, satisfying the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

No class members have objected to the proposed settlement, and only 17 of the 122,664 class members—less than 0.02%—have requested to be excluded from the settlement. Dkt. No. 610-3 at 4.

III. SETTLEMENT APPROVAL

Plaintiffs seek final approval of the class settlements. Final approval may only be granted if the Court, after "evaluat[ing] the fairness of a settlement as a whole," finds that the settlement is "fair, reasonable, and adequate." *Lane v.*

Facebook, Inc., 696 F.3d 811, 818–19 (9th Cir. 2012) (quoting Fed. R. Civ. P. 23(e)(2)). The Court's inquiry is guided by several, non-exclusive factors:

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

Id. (internal quotation marks omitted) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). "Each factor does not necessarily apply to every class action settlement, and others may also be considered." *Miller v. Wise Co.*, No. ED CV17-00616 JAK (PLAx), 2020 WL 1129863, at *5 (C.D. Cal. Feb. 11, 2020).

When there is a settlement prior to formal class certification, a court must also determine whether the settlement is the "product of collusion among the negotiating parties." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011) (quoting *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)). In addition to explicit collusion, a court should look for "more subtle signs" that class counsel have acted in their own self-interest or only in the interest of certain class members, such as: (1) class counsel receiving a disproportionate amount of the settlement or being "amply rewarded" when class members receive no monetary relief; (2) payment of attorneys' fees separate and apart from class funds; or (3) an arrangement reverting any fees not awarded to the defendant rather than the class fund. *Id.*

A. The Proposed Settlement Is Fair, Reasonable, and Adequate.

1. Strength of Plaintiff's Case and Settlement Amount

To determine if a settlement is fair, the Court must balance the strengths and weaknesses of Plaintiffs' case against the risks and expenses of continued litigation. *In re Mego*, 213 F.3d at 458–59. No one formula governs the Court's determination of the likelihood of Plaintiffs' success, which the Ninth Circuit has described as "nothing more than an amalgam of delicate balancing, gross

approximations and rough justice." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (quoting *Officers for Just. v. Civ. Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)).

Here, Plaintiffs produced evidence suggestive of agreements among at least some Defendants to not hire drivers under contract with other Defendants, which may support a finding of liability for antitrust violations under the federal Sherman Act and California's Cartwright Act. However, the Court found (after the settlements at issue here had been reached) that problems with Plaintiffs' damages model precluded class certification of Plaintiffs' antitrust claims against the non-settling Defendants. Dkt. No. 561 at 24–26. Thus, while some aspects of Plaintiffs' case are strong, they face serious obstacles to recovery, particularly as a class. Defendants, of course, deny liability and have litigated this case vigorously.

Plaintiffs asserted in connection with their preliminary approval motions that the initial settlement amount represented approximately 38% of Plaintiffs' potential recovery against the settling Defendants and that the additional settlement with Stevens represented more than 47% of the damages Plaintiffs estimated were attributable to Stevens. Dkt. Nos. 540 at 9, 564-1 at 17. Given the serious risk that Plaintiffs would be unable to recover on the merits of their antitrust claims, the settlement of their claims for nearly half of their hoped-for recovery strongly supports a finding that the settlement is fair and reasonable.

2. Risk, Expense, Complexity, and Duration of Further Litigation

"[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). This litigation, which has spanned more than five years, has already been enormously expensive and protracted. As discussed more fully below, Plaintiffs' counsel claim to have collectively devoted well over 10,000 hours to this case. The class certification motions and the currently pending summary judgment motion filed by the non-settling Defendants involve many thousands of pages of filings, and trial would likely be expensive and complicated—especially in the absence of class certification. An immediate recovery for the class members is preferable to prolonged risk and expense of further litigation, weighing in favor of settlement.

3. Risk of Maintaining Class Action Status through Trial

The Court denied Plaintiffs' motions to certify classes in connection with their claims—including their antitrust claims—against the non-settling Defendants. Dkt. No. 561. Plaintiffs are therefore unlikely to be able to maintain class action status throughout trial in the absence of settlement. This factor weighs heavily in favor of settlement.

4. Completed Discovery and Stage of the Proceedings

A court may presume a settlement is fair "following sufficient discovery and genuine arms-length negotiation." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D. at 528. Discovery in this case has been extensive. Over the course of five years, Plaintiffs' counsel have served more than 300 requests for production of documents, requests for admission, and interrogatories; reviewed more than 330,000 pages of documents produced to them; participated in more than 30 depositions; and assisted in the preparation of six extensive expert reports. Dkt. No. 610-2 at 6. The motions practice in this case has been voluminous; the docket now contains well over 600 entries. There is no question that counsel have sufficient familiarity with the facts of this case to make informed decisions about the realistic opportunities and risks of continued litigation, further supporting approval of the proposed settlement.

5. Experience and Views of Counsel

Where Class Counsel recommend the proposed terms of settlement, courts are to give their determination "[g]reat weight," because counsel "are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D. at 528. Plaintiffs here are represented by experienced counsel at multiple law firms who, as noted above, are highly familiar with the facts of the case. Counsel's unanimous agreement that the settlement is favorable to the class weighs in favor of approval.

6. Presence of a Governmental Participant

No government entity is a party to this action. However, the relevant federal and state authorities were notified of the settlement consistent with the Class

Action Fairness Act, and they have not raised any objections. This factor therefore bears little weight but slightly favors approval of the proposed settlement. *See* *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at *14 (N.D. Cal. Apr. 22, 2010) ("Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response to a class action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures.").

7. Reaction of the Class Members

As discussed above, the class settlement administrator sent notifications by mail and email to the 122,664 class members identified, informing them of their rights to object or to opt out of the settlement, and thousands of people visited the settlement website and called the dedicated toll-free telephone number. Dkt. No. 610-3 at 4. Despite this substantial response, not a single class member objected to the settlement, and only 17—less than 0.02% of the class—have opted out. *Id.* "[T]he 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 Telecomm. Coop.*, 221 F.R.D. at 529. The complete absence of objections here supports approval.

B. <u>The Settlement Is Not Collusive.</u>

None of the factors identified by the Ninth Circuit in *Bluetooth* as warnings of collusion is present here. The settlement provides substantial monetary payments to class members and does not disproportionately benefit class counsel. Any award of attorneys' fees is taken from the class funds, not a separate arrangement. And the settlement fund is non-reversionary. Nor do the circumstances otherwise suggest collusion. Counsel litigated this case vigorously for years before settling, and the settlement was reached with the assistance and approval of an experienced mediator over multiple mediation sessions. Dkt. No. 610-2 at 3. The settlement provides a favorable outcome to the class, to which there are no objections. Accordingly, the Court is satisfied that the settlement did not result from collusion between the negotiating parties.

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Based on its analysis of the factors for settlement final approval, the Court finds that the settlement is "fair, reasonable, and adequate" and not the product of collusion between the parties. *Lane*, 696 F.3d at 818. The Court therefore **GRANTS** Plaintiffs' motion for final approval of the class action settlement.

IV. ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS

A. Attorneys' Fees

Although the settlement agreements contemplated a possible award of attorneys' fees of up to one third the value of the settlement (including the non-monetary relief), Plaintiffs' counsel have limited their request to 25% of the $9.75 million cash fund, or $2,437,500. Dkt. No. 609-1 at 1.

As with other aspects of class settlements, courts have an obligation to scrutinize attorneys' fee agreements to ensure their fairness, adequacy, and reasonableness. *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). In cases "where a settlement produces a common fund for the benefit of the entire class," courts have discretion to "employ either the lodestar method or the percentage-of-recovery method." *Bluetooth*, 654 F.3d at 942. Regardless of which method the court applies, "the Ninth Circuit requires only that fee awards in common fund cases be reasonable under the circumstances." *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *8 (C.D. Cal. July 21, 2008) (cleaned up).

Under the percentage method, the court awards counsel a percentage of the common fund in attorneys' fees, for which the Ninth Circuit has established a 25% benchmark. *Hanlon*, 150 F.3d at 1029. The benchmark should be adjusted or replaced with a lodestar calculation when "special circumstances" justify a departure. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). To determine whether the percentage requested is fair and reasonable, courts consider factors including the results achieved, the risk of litigation, the skill required, the quality of work performed, the contingent nature of the fee and the financial burden, and the awards made in similar cases. *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013).

The requested 25% fee is fair and appropriate in this case. Plaintiffs' experienced counsel ably litigated this case, which involves a large class and difficult antitrust issues. Working under a contingency fee arrangement, counsel spent thousands of hours on discovery and motions practice, filed scores of briefs and other documents over the course of five years, and ultimately obtained a favorable recovery for their clients, all with no guarantee of success. The Court finds that a benchmark fee award of 25% is reasonable.

The requested fee is further supported by a cross-check against a rough estimate of the lodestar value. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("[T]he lodestar may provide a useful perspective on the reasonableness of a given percentage award."); *Barbosa*, 297 F.R.D. at 451 (noting that a cross-check of the lodestar "can be performed with a less exhaustive cataloguing and review of counsel's hours"). The lodestar is calculated by multiplying the hours reasonably expended times a reasonable hourly rate based on the experience of counsel and the prevailing market rate in the community. *Bluetooth*, 654 F.3d at 941.

Plaintiffs assert that their lodestar fees would reach $7,547,108.08, more than three times the amount they request. Dkt. No. 609-1 at 2. Plaintiffs support this assertion with evidence of the hours worked and the rates typically charged by each of the four firms representing them. Susman Godfrey L.L.P. claims 8,756.6 hours at hourly rates ranging from $275 for a paralegal to $2,000 for a partner, for a total lodestar of $6,136,587.50. Dkt. No. 609-2 at 6 of 10. Ackerman & Tilajef, P.C. claims 483.78 hours at rates ranging from $200 to $919, for a total lodestar of $344,323.76. Dkt. No. 609-3 at 7 of 17. Mayall Hurley, P.C. claims 1,315.28 hours at rates ranging from $676 to $915, for a total lodestar of $1,006,026.42. Dkt. No. 609-4 at 10 of 29. And Melmed Law Group, P.C. claims 116.7 hours at rates of $208 and $700, for a total lodestar of $60,170.40. Dkt. No. 609-5 at 16 of 21.

The Court is not fully persuaded that every aspect of Plaintiffs' claimed lodestar figure is necessarily reasonable. Nevertheless, it is unnecessary to calculate the precise reductions, if any, that may be appropriate to reach a reasonable lodestar because even if the Court were to cut the suggested lodestar in half (a much larger reduction than appears to be warranted), it would still exceed the requested fees by more than a million dollars. Accordingly, the Court finds

that the requested attorneys' fees of $2,437,500 are reasonable under the percentage method and supported by a lodestar cross-check.

B. Litigation Costs

In their motion for attorneys' fees and costs, the parties requested an award of $2,895,543.98 to reimburse litigation expenses they have incurred to prosecute this case since the filing of the Third Amended Complaint (TAC), when Plaintiffs added their antitrust claim. The lion's share of these expenses—nearly $2.3 million—are fees paid to experts, while the remainder includes expenses such as filing fees, travel expenses, costs of court, document storage, deposition transcripts, mediation, and research expenses.[3] After the Court questioned whether all these fees benefited the class, Plaintiffs filed a supplemental brief reducing their request to $2,716,510.45. Dkt. No. 676. This sum excludes (1) all expenses incurred before the filing of the TAC, (2) expert fees and local counsel expenses paid in connection with Plaintiffs' non-antitrust claims against CRST, and (3) fees and expenses incurred after class settlement.[4]

Courts approving class settlements regularly allow reimbursement of litigation expenses of the type sought here. *E.g.*, *Barbosa*, 297 F.R.D. at 454 (noting that travel fees, mediation fees, photocopies, and delivery and mail charges are "routinely reimbursed"). No class member has objected to the requested cost award, and the Court finds that the requested expenses were incurred for the benefit of the class. Reimbursing Plaintiffs' counsel for the out-of-pocket costs counsel expended on behalf of the class to obtain the class settlement and in

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[3] Each firm representing Plaintiffs provides evidence of the costs it incurred, with varying levels of specificity. Dkt. Nos. 609-2 at 10 of 10; 609-3 at 12–15 of 17; 609-4 at 14–17 of 29; 609-5 at 20–21 of 21.

[4] Plaintiffs' supplemental brief and supporting affidavit contains an arithmetic error; it purports to deduct from the $2,895,543.98 previously requested (1) $60,162.50 in costs incurred in connection with Plaintiffs' state law claims against CRST and (2) $118,447.57 in litigation costs incurred since the Court denied class certification. Subtracting those costs leaves $2,716,933.91, while Plaintiffs request only $2,716,510.45. The reason for this discrepancy, which amounts to less than $500, is unclear, but the Court accepts the lower amount requested by Plaintiffs.

furtherance of the class's claims against the non-settling Defendants is reasonable and appropriate under the facts and circumstances of this case. Accordingly, the Court awards Plaintiffs' counsel reimbursement of their litigation costs in the amount of $2,716,510.45, to be paid from the settlement fund.

C. Incentive Awards

Finally, Plaintiffs request incentive awards of $25,000 for each named Plaintiff. Incentive awards are discretionary and meant 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." *Rodriguez*, 563 F.3d at 958–59. Awards typically range from $2,000 to $10,000, and a $5,000 award is considered presumptively reasonable. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266–67 (N.D. Cal. 2015). Several factors may help guide the Court's determination of whether Plaintiffs' requested award is reasonable:

> (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Id. at 266 (quoting *Covillo v. Specialtys Cafe*, No. C-11-00594 DMR, 2014 WL 954516, at *8 (N.D. Cal. Mar. 6, 2014)).

The Court previously noted that the requested awards of $25,000 for each named Plaintiff were higher than the incentive awards typically allowed but found that some incentive award—including possibly a higher-than average award—was justified. Dkt. No. 562 at 10. At the Court's instruction, Plaintiffs have filed (largely identical) declarations from each of the named Plaintiffs in support of their request for incentive awards. All four state that they have assisted in a variety of tasks including interviewing and selecting class counsel; providing documents; assisting in preparation of the pleadings; reviewing discovery responses; participating in depositions, mediations, and settlement negotiations; and checking in with class counsel. Markson and McGeorge each participated in two full-day

depositions and estimate they have spent more than 250 hours on this case. Dkt. Nos. 609-6, 609-7. McClendon and Clark each participated in one full-day deposition and estimate that they have spend more than 200 hours on the case. Dkt. Nos. 609-8, 609-9. Plaintiffs provide no information about how much money each named Plaintiff expects to receive from the settlement fund.

Plaintiffs also suggest through the affidavit of attorney Robert Wasserman that they face the risk of adverse action from employers who learn of their role in this lawsuit, citing as evidence references to this litigation that appear in Google searches involving the named Plaintiffs. Dkt. No. 609-4 at 10-11. This concern appears highly speculative except to a limited extent for Markson. In any event, none of the named Plaintiffs testified in their declarations that they have actually lost any job opportunities because of their participation in this suit.

Upon review, the Court finds that Plaintiffs' years-long participation in this case justifies above-average incentive awards. The record does not, however, support the requested awards of $25,000 each—five times the presumptively reasonable amount. Considering the time spent by each named Plaintiff, the nature and duration of the litigation, and the risks arising from the named Plaintiffs' participation, the Court finds that incentive awards in the following amounts are fair, reasonable, and appropriate in this case: $15,000 for Curtis Markson; $13,500 for Mark McGeorge; $12,000 for Clois McClendon; and $12,000 for Eric Clark.

V. CONCLUSION

Plaintiffs' unopposed motion for final approval of the class settlement is **GRANTED** and the settlement agreements are **FINALLY APPROVED**. Plaintiffs' unopposed motion for attorneys' fees, litigation costs and an incentive award is **GRANTED** in part. The Court awards $2,437,500 in attorneys' fees and $2,716,510.45 in litigation costs to Plaintiffs' counsel; a $15,000 incentive payment to Plaintiff Curtis Markson; a $13,500 incentive payment to Plaintiff Mark McGeorge; a $12,000 incentive payment to Plaintiff Clois McClendon; and a $12,000 incentive payment to Plaintiff Eric Clark.

The parties within three days after entry of this Order shall submit an appropriate agreed stipulation of dismissal as to the settling Defendants or, if any

party is opposed to such dismissal, a joint status report reflecting the parties' positions.

Date: August 5, 2022

Hon. Stanley Blumenfeld, Jr.
United States District Judge