

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Myron Schellhorn et al,
Plaintiffs,
v.
Timios, Inc.,
Defendant.

Case No. 2:21-cv-08661-VAP-JCx

**Order GRANTING Motion for
Final Approval of Class Action
Settlement and Motion for
Attorneys’ Fees, Expenses, and
Service Awards (Doc Nos. 46-1,
47-1)**

Before the Court is Plaintiffs Myron Schellhorn, Rodney Allen, Tedda Allen, Lauren Waters, Jeff Harrington, and David Thompson’s (collectively, “Plaintiffs”) unopposed Motion for Final Approval of Class Action Settlement (Mot. for Settlement Approval, Doc No. 47-1), Motion for Attorneys’ Fees, Expenses, and Service Awards (Mot. for Attorneys’ Fees, Doc. No 46-1), and Supplemental Motion for Attorneys’ Fees, Expenses, and Service Awards (Suppl. Mot. for Attorneys’ Fees, Doc. No. 51.)

After considering all the papers filed in support of, and in opposition to, the Motions, as well as the arguments advanced at the hearing, the Court **GRANTS** the Motion for Final Approval of Class Action Settlement and **GRANTS IN PART** the Motion and Supplemental Motion for Attorneys’ Fees, Expenses, and Service Awards.

United States District Court
Central District of California

1 **I. BACKGROUND**

2 **A. Procedural History**

3 Plaintiffs Myron Schellhorn, Rodney Allen, and Tedda Allen filed a
4 Class Action Complaint against Timios, Inc. (“Defendant”) on November 3,
5 2021. (Doc. No. 1.) Plaintiffs Lauren Waters, Jeff Harrington, and David
6 Thompson filed a similar action against Defendant on November 4, 2021.
7 *See Waters, et al. v. Timios*, No. 2:21-cv-08709-VAP-(JCx) (C.D. Cal.). The
8 Court joined the two actions, and on March 1, 2021, Plaintiffs filed a First
9 Amended Complaint (“FAC”). (Doc. No. 18.)

10
11 The FAC alleges that Defendant suffered a data breach between July
12 18, 2021, and Jul 25, 2021, resulting in the disclosure of Plaintiffs’ personal
13 identifiable information (“PII”). (FAC ¶¶ 27-45.) Accordingly, the FAC
14 asserts the following claims against Defendant: 1) negligence; 2) negligence
15 per se; 3) breach of confidence; 4) breach of implied contract; 5) intrusion
16 into private affairs and invasion of privacy; 6) violation of the Illinois
17 Consumer Fraud Act; 7) violations of the Illinois Personal Information
18 Protection Act; 8) violation of Illinois’s Security Breach Notification Laws; 9)
19 unjust enrichment; and 10) declaratory judgment. (*Id.* ¶¶ 180-308.)

20
21 The parties engaged in informal settlement negotiations for several
22 months. (Mot. for Settlement Approval at 4.) Although the parties engaged
23 private mediator Bennett Picker, Esq., they were able to reach a settlement
24 before mediation. (*Id.*) The parties finalized the joint Settlement Agreement
25 (“Settlement Agreement” or “SA”) on March 31, 2022. (*Id.*; SA, Doc. No. 32-
26 1.) The Court granted Preliminary Approval of the Class Action Settlement

United States District Court
Central District of California

1 on May 10, 2022. (Doc. No. 45.) Plaintiffs now move for Final Approval of
2 Class Action Settlement and for Attorneys’ Fees, Expenses, and Service
3 Awards.

4
5 **B. Settlement Class**

6 The Settlement Class, as defined in the Settlement Agreement,
7 consists of:

8
9 [A]ll persons to whom Timios mailed notice that between July 19,
10 2021 and July 25, 2021, Timios was the target of a cyberattack in
11 which third-party criminals gained unauthorized access to Timios’
12 network, encrypted some of Timios’ systems, and may have gained
13 unauthorized access to the personal information of consumers.

14
15 (SA § IV 1.27.) The Settlement Class comprises approximately 74,755
16 persons (“Class Members”) who may have had their PII disclosed because
17 of the data breach. (Mot. for Settlement Approval at 5.)

18
19 The California Settlement Subclass, as defined in the Settlement
20 Agreement, consists of:

21
22 [A]ll persons residing in California between July 19, 2021 and July 25,
23 2021 to whom Timios mailed notice that between July 19, 2021 and
24 July 25, 2021, Timios was the target of a cyberattack in which third-
25 party criminals gained unauthorized access to Timios’ network,
26

1 encrypted some of Timios' systems, and may have gained
2 unauthorized access to the personal information of consumers.

3
4 (SA § IV 1.2.)

5
6 **C. Settlement Terms**

7 The Settlement Agreement provides to those Class Members who
8 submit a valid claim form: (1) reimbursement of out-of-pocket expenses and
9 lost time of up to \$500; (2) reimbursement of extraordinary expenses of up
10 to \$3,000; (3) \$50 if the Class Member is also a member of the California
11 Settlement Subclass; and (3) free identity theft protection services for
12 eighteen months. (SA §§ IV 2.1-2.4.)

13
14 Under the Settlement Agreement, Class Members must submit claim
15 forms within 120 days of preliminary approval,¹ and the Claims Administrator
16 shall accept or reject such claim forms within 30 days of receipt. (*Id.* §§ IV
17 1.15, 2.2, 2.5.3.) Class Members may dispute a claim decision with a
18 claims referee, who shall make a ruling within 15 days of the dispute. (*Id.* §
19 IV 2.5.5.) The Claims Administrator will issue checks for valid claims within
20 60 days of the final approval of the Settlement Agreement, or within 30 days
21 that the claim is approved, whichever is later. (*Id.* § IV 8.2.)

22
23
24 _____
25 ¹ The Settlement Agreement requires Class Members to submit a claim
26 form "on or before the 90th day after the Notice of Commencement Date."
(SA § IV 2.2.) The Notice of Commencement Date "means thirty days fol-
lowing entry of the Preliminary Approval Order." (*Id.* § IV 1.15.)

1 The Settlement Agreement entitles each named Plaintiff to a Service
2 Award of \$2,500. (*Id.* § IV 7.3.) Class Counsel may seek an award of
3 \$215,000 for attorneys' fees and costs. (*Id.* § IV 7.2.) An order of the Court
4 modifying or reducing the amount of attorneys' fees, costs, expenses, or
5 service awards does not constitute grounds for cancellation or termination of
6 the Settlement Agreement. (*Id.* § IV 9.4.)

7
8 Finally, Plaintiffs and members of the Settlement Class release any
9 future related claims against Defendant. (*Id.* § IV 6.)

10 11 **II. LEGAL STANDARD**

12 Under Rule 23(e) of the Federal Rules of Civil Procedure, "claims,
13 issues, or defenses of a certified class may be settled, voluntarily dismissed,
14 or compromised only with the court's approval." Fed. R. Civ. P. 23(e). A
15 court must engage in a two-step process to approve a proposed class
16 action settlement. First, the court must determine whether the proposed
17 settlement deserves preliminary approval. *Nat'l Rural Telecomms. Coop. v.*
18 *DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). Second, after notice is
19 given to Class Members, the Court must determine whether final approval is
20 warranted. *Id.* A court should approve a settlement pursuant to Rule 23(e)
21 only if the settlement "is fundamentally fair, adequate and reasonable."
22 *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *accord*
23 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (*citing*
24 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

1 In the Ninth Circuit, courts must balance the following factors to
2 determine whether a class action settlement is fair, adequate, and
3 reasonable: (1) the strength of the plaintiffs' case, (2) the risk, expense,
4 complexity, and likely duration of further litigation, (3) the risk of maintaining
5 class action status throughout the trial, (4) the amount offered in settlement,
6 (5) the extent of discovery completed and the stage of the proceedings, (6)
7 the experience and views of counsel, (7) the presence of a governmental
8 participant, and (8) the reaction of the Class Members to the proposed
9 settlement. *Torrisi*, 8 F.3d at 1375; *accord Hanlon*, 150 F.3d at 1026. "In
10 addition, the settlement may not be the product of collusion among the
11 negotiating parties." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458.

12
13 "[S]trong judicial policy . . . favors settlements, particularly where
14 complex class action litigation is concerned." *Class Plaintiffs v. City of*
15 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). When "the parties negotiate a
16 settlement agreement before the class has been certified, settlement
17 approval 'requires a higher standard of fairness' and 'a more probing inquiry
18 than may normally be required under Rule 23(e).'" *Roes, 1-2 v. SFBSC*
19 *Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (quoting *Dennis v. Kellogg*
20 *Co.*, 697 F.3d 858, 864 (9th Cir. 2012)). Because a class was not certified
21 prior to the parties' settlement, the Court applies a "higher standard" and
22 conducts a "more probing inquiry" in evaluating the fairness of the
23 Settlement Agreement. Further, the Court neither presumes the Settlement
24 Agreement is fair nor that it is the product of non-collusive, arms-length
25 negotiations in evaluating the applicable factors. *See Saucillo v. Peck*, 25
26 F.4th 1118, 1131 (9th Cir. 2022).

1 **III. DISCUSSION**

2 **A. Plaintiffs’ Motion for Final Approval of Class Action Settlement**

3 1. Product of Serious, Informed, Non-Collusive Negotiations

4 To approve the Settlement Agreement at this stage, the Court must
5 first find that it is “not the product of fraud or overreaching by, or collusion
6 between, the negotiating parties.” *Hanlon*, 150 F.3d at 1027.

7
8 The Settlement Agreement appears to be the product of arms-length
9 negotiations. This case was filed on November 3, 2021, (Doc. No. 1), and
10 since then the Parties have spent several months engaging in negotiations
11 prior to reaching a settlement. (Mot. for Settlement Approval at 4.)

12
13 Moreover, the Court has carefully scrutinized the Settlement
14 Agreement and finds no signs of overt or subtle collusion. The Settlement
15 Agreement provides a method by which Class Members can recover
16 reasonable compensation for any expenses they might have incurred from
17 the alleged data breach. It also provides identity theft protection services
18 designed to mitigate the risk of future injury. Additionally, because the
19 parties “did not negotiate attorneys’ fees until agreement on all substantive
20 portions of the class resolution had been reached,” (*Id.* at 16), there is little
21 risk that Defendant agreed to “excessive fees and costs in exchange for
22 counsel accepting an unfair settlement on behalf of the class.” *In re*
23 *Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011)
24 (citation and quotation marks omitted). Although the Court ultimately
25 awards Class Counsel less than the requested \$215,000 in attorneys’ fees,
26

United States District Court
Central District of California

1 *infra*, the requested fees are not excessive in light of the potential recovery
2 by Class Members and do not support an inference of collusion.

3
4 The Court therefore finds that the parties engaged in arm’s length,
5 serious, informed, and non-collusive negotiations. This factor weighs in
6 favor of approval.

7
8 2. Strength of Plaintiff’s Case and Future Risk

9 Plaintiffs’ FAC alleges claims for: 1) negligence; 2) negligence per se;
10 3) breach of confidence; 4) breach of implied contract; 5) intrusion into
11 private affairs and invasion of privacy; 6) violation of the Illinois Consumer
12 Fraud Act; 7) violations of the Illinois Personal Information Protection Act; 8)
13 violation of Illinois’s Security Breach Notification Laws; 9) unjust enrichment;
14 and 10) declaratory judgment. (FAC ¶¶ 180-308.) Although Plaintiffs may
15 be able to prove their claims, the outcome is still far from certain as “[d]ata
16 breach cases . . . are particularly risky, expensive, and complex.” *Gordon v.*
17 *Chipotle Mexican Grill, Inc.*, No. 17-CV-01415-CMA-SKC, 2019 WL
18 6972701, at *1 (D. Colo. Dec. 16, 2019). Moreover, regardless of the final
19 outcome, the case would likely require extensive continued litigation absent
20 the Court’s approval of the Settlement Agreement. As the Court previously
21 noted, the future litigation risks in this case weigh in favor of settlement
22 approval. (Doc. No. 45, at 16-17.)

23
24 3. Amount Offered in the Settlement

25 Under the Settlement Agreement, Class Members may file a claim
26 form for: (1) reimbursement of out-of-pocket expenses and lost time of up to

1 \$500; (2) reimbursement of extraordinary expenses of up to \$3,000; (3) \$50
2 if the Class Member is also a member of the California Settlement Subclass;
3 and (3) free identity theft protection services for eighteen months. (SA §§ IV
4 2.1-2.4.) The Court finds that the reimbursement amounts adequately
5 compensate Class Members for any harm they may have suffered as a
6 result of the data breach and finds that the provision of identity theft
7 protection services reasonably mitigates the risk of future harm. As such,
8 the Settlement Agreement achieves a fair result.

9
10 The Court must nevertheless “carefully assess the reasonableness of
11 a fee amount spelled out in a class action settlement agreement.” *Staton v.*
12 *Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). “That the defendant in form
13 agrees to pay the fees independently of any monetary award or injunctive
14 relief provided to the class in the agreement does not detract from the need
15 carefully to scrutinize the fee award.” *Id.* at 964. As discussed in more
16 detail below, although the Court awards Class Counsel less than the
17 \$215,000 they ask for, the requested fees are not so excessive as to
18 support the inference that “the defendant obtained an economically
19 beneficial concession with regard to the merits provisions.” *Id.* This factor
20 therefore weighs in favor of approval.

21
22 4. Extent of Discovery Completed and Stage of the Proceedings

23 This factor requires the Court to evaluate whether “the parties have
24 sufficient information to make an informed decision about settlement.”
25 *Linney v. Cellullar Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

1 As noted above, the parties litigated diligently since November 2021,
2 having engaged in months of negotiations, *supra*. The parties, however,
3 have not engaged in formal discovery, with Class Counsel relying instead on
4 “experience in similar types of privacy and data protection practices.” (Mot.
5 for Settlement Approval at 14.) Accordingly, the Court finds that this factor
6 does not weigh in favor of or against approval.

7
8 5. Experience and Views of Counsel

9 Class Counsel have ample experience litigating class actions similar
10 to this case and thus have demonstrated the ability to prosecute vigorously
11 on behalf of the Class Members. (See Berry Decl., Doc. No. 46-2, ¶¶ 2-9,
12 Exs. B-E.) Accordingly, the Court finds this factor weighs in favor of
13 approval.

14
15 6. Presence of a Governmental Participant

16 As there is no governmental participant in this action, this factor is
17 irrelevant for the purposes of final approval.

18
19 7. The Reaction of the Class Members to the Proposed
20 Settlement

21 “[T]he absence of a large number of objections to a proposed class
22 action settlement raises a strong presumption that the terms . . . are
23 favorable to the class members.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D.
24 at 529.

1 Following preliminary approval of the settlement by the Court, the
2 Claims Administrator distributed the approved class notice to the Class
3 Members. (See Ferruzzi Decl., Doc. No. 47-2, ¶¶ 9-13.) During the allotted
4 response period, the Claims Administrator received no objections and only
5 three requests for exclusion. (*Id.* ¶¶ 16.) Given the absence of any
6 objections and the small number of requests for exclusion, the Class
7 response is favorable overall. Accordingly, this factor weighs in favor of
8 approval.

9
10 8. Balancing the Factors

11 As most of the relevant factors favor approval, and none weigh
12 against, the Court finds that the proposed Settlement Agreement is fair,
13 reasonable, and adequate and **GRANTS** final approval of the Settlement
14 Agreement.

15
16 **B. Plaintiff’s Motion for Attorneys’ Fees, Expenses, and Service**
17 **Awards**

18 When evaluating attorneys’ fees, “the district court has discretion in
19 common fund cases to choose either the percentage-of-the-fund or the
20 lodestar method.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir.
21 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
22 1295–96 (9th Cir.1994)). When using the percentage-of-the-fund method,
23 “courts typically set a benchmark of 25% of the fund as a reasonable fee
24 award and justify any increase or decrease from this amount based on
25 circumstances in the record.” *Monterrubio v. Best Buy Stores, L.P.*, 291
26

1 F.R.D. 443, 455 (E.D. Cal. May 14, 2013); see *Paul, Johnson, Alston & Hunt*
2 *v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).

3
4 The Ninth Circuit has held that “attorneys’ fees sought under a
5 common fund theory should be assessed against every class members’
6 share, not just the claiming members.” *Six (6) Mexican Workers v. Arizona*
7 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). When the case
8 “involves a settlement that was negotiated at arms length,” this rule applies
9 even if “the unclaimed money in the fund . . . will be returned to the
10 defendants.” *Williams v. MGM-Pathe Commc’ns Co.*, 129 F.3d 1026, 1027
11 (9th Cir. 1997).

12
13 Although Class Counsel do not seek fees from a common fund, they
14 seek fees under a common fund theory. They argue that the \$215,000 in
15 fees they seek is reasonable because it represents less than 1.4% of the
16 Class Members’ possible recovery. (Suppl. Mot. for Attorneys’ Fees at 4). If
17 every one of the 74,755 Class Members claimed the identity protection they
18 were offered, for example, they would have received \$15,137,887.50 in
19 benefits. (*Id.*)

20
21 Class Counsel do not suggest that they are entitled to 25% of this
22 potential recovery, or \$3.78 million. Indeed, the amount of hours Class
23 Counsel spent drafting a complaint and negotiating a settlement do not
24 justify such a large amount, see *infra*. Instead, Class Counsel essentially
25 seek a 0.057x multiplier on the standard common fund benchmark. As even
26 a small change in the multiplier would result in a relatively large change to

1 the attorneys' fees, the Court finds it more appropriate to compute the
2 attorneys' fees by applying the lodestar method than to estimate an exact
3 multiplier.

4
5 1. Lodestar

6 The lodestar is "calculated by multiplying the number of hours the
7 prevailing party reasonably expended on the litigation by a reasonable
8 hourly rate." *Morales v. City of San Rafael*, 96 F.3d, 359, 363 (9th Cir.
9 1996). "To inform and assist the court in the exercise of its discretion, the
10 burden is on the fee applicant to produce satisfactory evidence—in addition
11 to the attorney's own affidavits—that the requested rates are in line with
12 those prevailing in the community for similar services by lawyers of
13 reasonably comparable skill, experience and reputation." *Camacho v.*
14 *Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008) (quoting *Blum v.*
15 *Stenson*, 465 U.S. 886, 895 n.11 (1984)); *Roberts v. City and County of*
16 *Honolulu*, 2019 DJDAR 8807–08 (9th Cir. 2019). The "relevant community"
17 for purposes of the "prevailing market rate" is the "forum in which the district
18 court rests." *Id.* at 979.

19
20 The Court has reviewed Class Counsel's billing summaries proposing
21 a lodestar amount of \$151,734.85. The summaries report 236.58 hours
22 spent on this case at hourly rates ranging from \$125 to \$208 for non-
23 attorneys and \$325 to \$575 for associates, and \$695 to \$919 for partners.
24 (See Berry Decl. ¶ 28, Ex. A.) Class Counsel point to other data breach
25 class actions where they claim similar rates have been approved. (*Id.* ¶ 30.)
26 The cited cases, however, computed attorneys' fees using a percentage-of-

1 the-fund method and did not explicitly approve Class Counsel’s hourly rates.
2 To the extent that the decisions reviewed Class Counsel’s billing statements,
3 such reviews were cursory and done only as part of a lodestar cross-check.
4 *Cf. Schiller v. David’s Bridal, Inc.*, No. CV-10-00616-AWI, 2012 WL 2117001,
5 at *20 (E.D. Cal. June 11, 2012) (“Where the use of the lodestar method is
6 used as a cross-check to the percentage method, it can be performed with a
7 less exhaustive cataloguing and review of counsel’s hours.”).

8
9 Class Counsel do not support their hourly rates with survey evidence
10 or declarations from other attorneys in the field. *See Widrig v. Apfel*, 140
11 F.3d 1207, 1209-10 (9th Cir. 1998); *Guam Soc’y of Obstetricians &*
12 *Gynecologists v. Ada*, 100 F.3d 691, 696 (9th Cir. 1996) (noting that
13 declarations from attorneys in the community can provide adequate proof of
14 the reasonableness of counsel’s rates). Based on the evidence submitted
15 by Class Counsel, including law firm and attorney profiles, as well as the
16 Court’s general experience with prevailing rates for similar types of litigation,
17 the Court does not find the \$800 and \$919 hourly rates for David Lietz and
18 the \$740 hourly rate for M. Anderson Berry to be reasonable. Instead, the
19 Court finds Mr. Lietz and Mr. Berry qualified to bill at \$700 an hour. This
20 adjustment in their hourly rates results in a modified lodestar amount of
21 \$144,893.63.

22
23 The summaries provided by Class Counsel are not itemized in a way
24 that allow for a detailed review of the hours spent. As this type of “block
25 billing” may “increase time by 10% to 30%,” *Welch v. Metro. Life Ins. Co.*,
26 480 F.3d 942, 948 (9th Cir. 2007) (citing The State Bar of California

1 Committee on Mandatory Fee Arbitration, Arbitration Advisory 03–01
2 (2003)), the Court imposes an across-the-board reduction of 10% on Class
3 Counsel’s requested hours resulting in a lodestar amount of \$130,404.27.
4

5 At the October 17, 2022 hearing for Plaintiffs’ Motion for Attorneys’
6 Fees, the Court permitted Class Counsel to file a Supplemental Motion for
7 Attorneys’ Fees documenting additional fees incurred by Class Counsel
8 since they filed their first Motion for Attorneys’ Fees on July 25, 2022. The
9 Supplemental Motion reports 36.7 hours spent for a total fee of \$22,658.00
10 at the Court’s adjusted hourly rates.² (Berry Suppl. Decl., Doc. No. 51-1, ¶¶
11 20, 26.) As Class Counsel again failed to break down how these hours
12 were spent, the Court reduces the hours by 10%, resulting in a lodestar
13 amount of \$20,392.20. The total lodestar amount is \$150,796.47.
14

15 There is a strong presumption that the lodestar figure represents a
16 reasonable fee. *Jordan v. Multnomah County*, 815 F.2d at 1262 (citing
17 *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S.
18 546, 565 (1986)). Class Counsel, however, suggest that a 1.42 lodestar
19 multiplier is appropriate in this case. (See Mot. for Attorneys’ Fees at 15.)
20

21 An upward adjustment of the lodestar is appropriate only in
22 extraordinary cases, such as when the attorneys faced exceptional risks of
23 not prevailing or not recovering any fees. *Chalmers v. City of Los Angeles*,

24 ² At the hearing, the Court declined to permit Class Counsel to provide ad-
25 ditional evidence supporting higher rates in their Supplemental Motion for
26 Attorneys’ Fees, noting that any such evidence should have been included
in their original Motion for Attorneys’ Fees.

1 796 F.2d 1205, 1212 (9th Cir. 1986). In determining whether an upward
2 adjustment is appropriate, courts consider: time and labor required; the
3 novelty and difficulty of the questions involved; the skill needed to perform
4 the legal service properly; the preclusion of other employment by the
5 attorney due to acceptance of the case; the customary fee; whether the fee
6 is fixed or contingent; time limitations imposed by the client or the
7 circumstances; the amount involved and the results obtained; the
8 experience, reputation, and ability of the attorney; the “undesirability” of the
9 case; the nature and length of the professional relationship with the client;
10 and awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,
11 70 (9th Cir.1975). The Court, however, does not need to discuss all of these
12 factors “because most are not matters on which anything is at issue or
13 needs to be said,” *McGinnis v. Ky. Fried Chicken of Cal.*, 51 F.3d 805, 809
14 (9th Cir. 1994), and many of the *Kerr* factors are subsumed within the
15 lodestar calculation, see *Jordan v. Multnomah County*, 815 F.2d at 1262.

16
17 The facts in this case do not warrant an upward adjustment of the
18 lodestar. Although the case, had it proceeded, likely would have involved
19 complex litigation, Class Counsel’s work appears to have consisted primarily
20 of drafting a complaint and negotiating a settlement. This type of work is not
21 particularly novel or difficult. Class Counsel claim to have spent over 200
22 hours performing this work, but these hours are adequately compensated by
23 the reasonable hourly rate set by the Court above. And while Class
24 Counsel have achieved a reasonable and fair result for the Class Members,
25 the result is not so extraordinary as to justify a departure from the standard
26 lodestar.

1 Accordingly, the Court **GRANTS** Class Counsel attorneys' fees in the
2 amount of \$150,796.47.

3
4 2. Costs

5 Class Counsel seek reimbursement of \$2,531.71 in litigation costs.
6 (Mot. for Attorneys' Fees at 17). These include \$1,329.08 in filing fees,
7 service fees, delivery fees, copy fees and research fees incurred by the
8 Arnold Law Firm and Markovits, Stock & DeMarco, LLC. (See Berry Decl. ¶
9 29, Ex. A.) Class Counsel, however, do not itemize the remaining \$1,202.63
10 in costs. In its prior order granting preliminary approval of the Settlement
11 Agreement, the Court cautioned that it was "unlikely to approve the litigation
12 costs" requested by Class Counsel, (Doc. No. 45, at 21), because Class
13 Counsel had not "attached any accounting of past costs or expenses," (*Id.*
14 at 19.) As Class Counsel has not remedied this deficiency with respect to
15 \$1,202.63 in costs, the Court only approves a reimbursement for the
16 amount for which an accounting has been made, i.e., \$1,329.08.

17
18 In their Supplemental Motion for Attorneys' Fees, Class Counsel seek
19 an additional \$509.12 for travel and research costs incurred between July
20 21, 2022, and October 17, 2022.³ (Suppl. Mot. for Attorneys' Fees at 9).
21 The Court approves these costs.

22
23
24 ³ Class Counsel also ask the Court for leave to file additional supplemental
25 briefing in support of their lodestar, including costs and expenses. (Suppl.
26 Mot. for Attorneys' Fees at 10). As the Court has already granted leave to
file a supplemental motion on the matter, the Court declines to do so for a
second time.

1 3. Service Awards

2 Named plaintiffs “are eligible for reasonable incentive payments.”
3 *Staton*, 327 F.3d at 977. Such awards “are intended to compensate class
4 representatives for work done on behalf of the class, to make up for
5 financial or reputational risk undertaken in bringing the action, and,
6 sometimes, to recognize their willingness to act as a private attorney
7 general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir.
8 2009).

9
10 “The district court must evaluate [incentive] awards individually, using
11 ‘relevant factors includ[ing] the actions the plaintiff has taken to protect the
12 interests of the class, the degree to which the class has benefitted from
13 those actions, . . . the amount of time and effort the plaintiff expended in
14 pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation.’”
15 *Staton*, 327 F.3d at 977 (alterations in original).

16
17 Courts may also consider: the risk to the class representative in
18 commencing suit, both financial and otherwise; the notoriety and personal
19 difficulties encountered by the class representative; the amount of time and
20 effort spent by the class representative; the duration of the litigation; and the
21 personal benefit (or lack thereof) enjoyed by the class representative as a
22 result of the litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294,
23 299 (N.D. Cal. Aug. 16, 1995). “Courts have generally found that \$5,000
24 incentive payments are reasonable.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652,
25 669 (E.D. Cal. Jun. 24, 2008) (citations omitted).

26

United States District Court
Central District of California

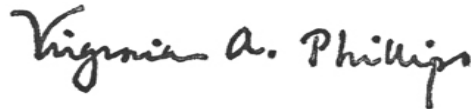
1 Plaintiffs Myron Schellhorn, Tedda Allen, and Rodney Allen aver that
 2 they participated in the litigation from its inception through settlement and
 3 have each spent between four and seven hours researching their rights and
 4 those of the class; researching their responsibilities and duties as class
 5 representatives; communicating with Class Counsel; producing documents
 6 related to their interactions with Defendants; and reviewing the complaints
 7 and declarations filed in this case. (Doc Nos. 51-3, 51-4, 51-5.) Plaintiffs
 8 Lauren Waters, Jeff Harrington, and David Thompson aver that they spent
 9 numerous hours communicating with Class Counsel. (Doc Nos. 51-6, 51-7,
 10 51-8.) The Court finds that Plaintiffs' participation in the litigation justify
 11 service awards, and accordingly **APPROVES** a \$2,500 service award for
 12 each of the named plaintiffs.

13
14 **IV. CONCLUSION**

15 For the reasons stated above, the Court **GRANTS** the Motion for Final
 16 Approval of Class Action Settlement and **GRANTS IN PART** the Motion for
 17 Attorneys' Fees, Expenses, and Service Awards. It awards attorneys' fees
 18 in the amount of \$150,796.47, costs in the amount of \$1,838.20, and service
 19 awards in the amount of \$15,000 (\$2,500 for each of the six named
 20 plaintiffs).

21
22 **IT IS SO ORDERED.**

23
24 Dated: 11/9/22



25 _____
26 Virginia A. Phillips
Senior United States District Judge

United States District Court
Central District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26