

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
None		None

Proceedings: MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES

Before the Court are a Motion for Order Granting Final Approval of Class Action Settlement ("Motion") filed by plaintiffs Larry Barragan and Frank Calandrino (collectively, "Plaintiffs" or "Named Plaintiffs") and a Motion for Reimbursement of Attorneys' Fees and Costs. (Dkts. 36-37.) Defendants Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc. (collectively, "Defendants") do not oppose either motion. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing scheduled for May 9, 2022 is vacated, and the matter taken off calendar.

I. Factual and Procedural Background

Plaintiffs seek final approval of their settlement of wage-and-hour claims. On February 22, 2021, Plaintiffs filed a Complaint in Los Angeles County Superior Court. The original complaint asserted claims for: (1) failure to authorize and permit rest periods (California Labor Code §§ 226.7, Industrial Welfare Commission ("IWC") Wage Order 1-2001); (2) failure to furnish accurate wage statements (California Labor Code §§ 226 and 226.3); (3) recovery of civil penalties under the Private Attorneys General Act ("PAGA") (California Labor Code § 2698 et seq.); and (4) violation of the California Unfair Competition Law (California Business & Professions Code § 17200 et seq.) (Compl. ¶¶ 33-59.) Defendants deny all allegations of wrongdoing and liability.

On April 5, 2021, Defendants removed the action on the basis that this Court has diversity jurisdiction. (Dkts. 1, 10.) On December 17, 2021, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement. (Dkt. 28.) On January 20, 2022, Plaintiffs filed a First Amended Complaint ("FAC") pursuant to the parties' stipulation to add an off-duty meal period claim and to refine the class definition. (Dkts. 30-31.) On January 21, 2022, the Court provisionally certified the proposed class for purposes of settlement only and approved the proposed notice and plan of dissemination to the settlement class; the appointment of Larry

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

Barragan and Frank Calandrino as class representatives; the appointment of Gilbert & Sackman and Hadsell Stormer Renick & Dai LLP, as class counsel; and CAC Services Group, LLC (“CAC Services” or “Settlement Administrator”) to act as administrator. (Dkt. 35.)

The settlement agreement (the “Settlement Agreement”) includes a settlement amount of \$385,000 (the “Settlement Fund”) that Defendants are to pay on an all-cash, non-reversionary basis, from which 25%, or \$96,250 would be awarded to Plaintiffs’ counsel and Named Plaintiffs would receive \$5,000 incentive payments. Other payments from the settlement fund include payment for PAGA civil penalties, litigation costs, and settlement administration costs. The net settlement fund of \$260,750 would be distributed to 39 settlement class members with an average net settlement of \$6,685.90. The settlement class has agreed to certain releases.

II. Class Action for Settlement Purposes

Plaintiffs must demonstrate the proposed settlement class meets the requirements of Rule 23(a) and Rule 23(b)(3). See Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 580 (9th Cir. 2010), rev’d on other grounds, 564 U.S. 338 (2011). Rule 23(a) requires a finding that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires a finding that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

To obtain class certification, “actual, not presumed, conformance with Rule 23(a) [is] . . . indispensable,” and the Court conducts a “rigorous analysis” to ensure these requirements are satisfied. Gen. Tel. Co. of the Sw. v. Falcon, 457 U.S. 147, 160-61 (1982). This rigorous analysis “does not mean that a district court must conduct a full-blown trial on the merits prior to certification. A district court’s analysis will often, though not always, require looking behind the pleadings, even to issues overlapping with the merits of the underlying claims.” Dukes, 603 F.3d at 581. Plaintiff must demonstrate to the Court’s satisfaction, and not merely allege, that the suit is appropriate for class resolution. Id. at 582. Rule 23 “provides district courts with broad discretion to determine whether a class should be certified.” Armstrong v. Davis, 275 F.3d 849, 871 n. 28 (9th Cir. 2001).

The Settlement Class is defined as follows:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

Class” or “Class Members” shall mean: All current and former hourly employees of Kinder Morgan, Inc. or Kinder Morgan Terminals, Inc. who worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals, who do not request to exclude themselves (i.e. opt out) from the settlement. “Class Period” shall mean the period from February 22, 2017, through the date of Preliminary Approval.

(Dkt. 28-3; Young Decl., Exh. 1, Joint Stipulation of Class Action Settlement And Release (“SA”) at 2-3.) For the reasons discussed below, the Court finds that Named Plaintiffs satisfy the class certification requirements of Rule 23(a) and (b)(3) for settlement purposes.

A. Numerosity

The numerosity requirement is met if the class is so numerous that joinder of all members individually is “impracticable.” Fed R. Civ. P. 23(a)(1). “No exact numerical cut-off is required; rather, the specific facts of each case must be considered.” In re Cooper Cos. Inc. Sec. Litig., 254 F.R.D. 628, 634 (C.D. Cal. 2009) (citing Gen. Tel. Co. of Nw., Inc. v. EEOC, 446 U.S. 318, 330 (1980)). However, “numerosity is presumed where the plaintiff class contains forty or more members.” Litty v. Merrill Lynch & Co., 2015 WL 4698475, at *3 (C.D. Cal. Apr. 27, 2015) (citing In re Cooper Cos. Sec. Litig., 254 F.R.D. at 634). Based on the settlement administrator’s review of data from Defendants, there are 39 class members. (Dkt. 38-1, Decl. of Jeffrey J. Johnson (“Johnson Decl.”) ¶ 10.) Thus, the numerosity requirement is met.

B. Commonality

The commonality requirement is met if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Class claims must “depend upon a common contention . . . of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” Dukes, 564 U.S. at 350. “The fact that there is some factual variation among the class grievances will not defeat a class action . . . A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2).” Ballard v. Equifax Check Servs., Inc., 186 F.R.D. 589, 594 (E.D. Cal. 1999) (citation omitted). The Court finds that the lack of a rest/meal break policy and the uniform failure to authorize such breaks are matters of common proof. Defendant either violated the California Labor Code, IWC regulations, and the UCL, or they did not. Therefore, the commonality requirement is met.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

C. Typicality

Typicality requires that “the claims or defenses of the representative parties [be] typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This will “assure that the interest of the named representative aligns with the interests of the class.” Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992). Class representatives “must be able to pursue [their] claims under the same legal or remedial theories as the represented class members.” In re Paxil Litig., 212 F.R.D. 539, 549 (C.D. Cal. 2003) (citing Kennedy v. Unumprovident Corp., 50 F. App’x 354 (9th Cir. 2002)). Named Plaintiffs, like class members, worked as non-exempt hourly employees at Defendants’ facilities during the class period. To the extent that Defendants violated the California Labor Code and other regulations, Plaintiffs are not subject to any unique defenses that would render their claims atypical and have suffered the same injury as class members. Therefore, the typicality requirement is met.

D. Adequacy of Representation

Rule 23(a) also requires that the representative parties be able to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Adequate representation ‘depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.’” Crawford v. Honig, 37 F.3d 485, 487 (9th Cir.1994) (quoting Brown v. Ticor Title Ins. Co., 982 F.2d 386, 390 (9th Cir.1992)). The Court previously concluded that no conflict of interest appears to exist between Plaintiffs and the other class members, that Plaintiffs are adequate representatives and selected counsel with experience in class action litigation, including representation of unionized workers. (See Dkt. 35 at 5.) Based on Plaintiffs’ briefing and evidence, it appears that they have taken an active role in the litigation and continued to do so throughout the settlement. (Dkt. 36-3; Barragan Decl.) For these reasons, the adequacy requirement is met.

E. Predominance

The predominance inquiry tests “whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” Hanlon, 150 F.3d at 1022. This analysis requires more than proof of common issues of law or fact. Id. Rather, the common questions must “present a significant aspect of the case [that] they can be resolved for all members of the class in a single adjudication.” Id. “Considering whether questions of law or fact common to class members predominate begins . . . with the elements of the underlying cause of action.” Erica P. John Fund, Inc. v. Halliburton Co., 563 U.S. 804, 809 (2011).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

“When the claim is that an employer’s policy and practices violated labor law, the key question for class certification is whether there is a consistent employer practice that could be a basis for consistent liability.” Kamar v. Radio Shack Corp., 254 F.R.D. 387, 399 (C.D. Cal. 2008). Class certification is usually appropriate where “liability turns on an employer’s uniform policy that is uniformly implemented, since in that situation predominance is easily established.” Id. Common claims predominate where a company-wide policy governs how employees spend their time and/or how they are paid. See, e.g., Wright v. Linkus Enterprises, Inc., 259 F.R.D. 468, 473 (E.D. Cal. 2009) (finding predominance, despite minor factual difference between individual class members, where the case involved “alleged policies that required class members to work without compensation, meal and rest periods, and/or reimbursement for expenses”).

The Court previously concluded that liability turns on Defendants’ failure to authorize or permit off-duty rest and meal periods. (Dkt. 35 at 6-7.) Although there may be some individualized determination based on employment status within the class period, any individualized damage assessments do not undermine the action’s suitability for class certification. See Yokoyama v. Midland Nat. Life Ins. Co., 594 F.3d 1087, 1089 (9th Cir. 2010) (explaining that the “amount of damages is invariably an individual question and does not defeat class action treatment”). Accordingly, it appears the predominance requirement is met.

F. Superiority

The superiority inquiry asks whether “a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.” Fed. R. Civ. P. 23(b)(3). The class action method is considered to be superior if “classwide litigation of common issues will reduce litigation costs and promote greater efficiency.” Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996).

Here, potential recovery for individual class members appears to be relatively small and litigation uneconomical for these individuals. Because the claims of all settlement class members are identical, there is no apparent reason that any given class member should need to pursue his or her claims individually. “If plaintiffs cannot proceed as a class, some—perhaps most—will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover.” Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc., 244 F.3d 1152, 1163 (9th Cir. 2001). Finally, any class member who wishes to control their own litigation had the opportunity to opt out of the class. Therefore, it appears the superiority requirement is satisfied. See Hanlon, 150 F.3d at 1023.

Accordingly, the Court certifies, for settlement purposes only, the proposed settlement class.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

III. Adequacy of Notice to Settlement Class

Under Rule 23(e), this Court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e). This must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Klee v. Nissan N. Am., Inc., 2015 WL 4538426, at *5 (C.D. Cal. July 7, 2015). On February 25, 2022, CAC Services mailed notices to all settlement class members based on names and addresses provided by Defendants. (Dkt. 38-1; Johnson Decl. ¶ 5.)^{1/} CAC Services disseminated notice to the class by first-class mail. (Id.)

Notice included the following information: material terms of the settlement; the definition of the class; class member’s right to seek exclusion from the settlement; the total settlement amount including relevant deductions for PAGA penalties, service awards, attorneys’ fees and costs, and administrative costs; description of and steps to object to the settlement agreement; process for disputing employment records for allocation of funds; formula for fund allocations; the procedures and timing for taking varied actions; the date set for the final approval hearing; and contact information for class counsel. (Dkt. 38; Johnson Decl., Exh. 1.)

To ensure sufficient notice to all class members, Defendants shared with CAC Services the following information for each class member: name; last known address; telephone number; social security number; and dates of employment. (Dkt. 38; Johnson Decl. ¶ 6.) Prior to mailing the notice packets, CAC Services processed the class member list through the United States Postal Service’s National Change of Address database. (Id. ¶ 6.) For the three notice packets that were returned, CAC Services performed an advanced search and re-mailed those notices with no notice packets remaining as undeliverable. (Id. ¶ 8.) The settlement administrator attests that “[i]s my opinion that the . . . notice program is adequate and reasonable” and that “the implemented notice program is fully compliant with the notice requirements established by . . . the parties’ Settlement Agreement.” (Id. ¶ 11.) Based on Plaintiffs’ briefing and the evidence submitted, the Court finds that the notice procedures satisfied the requirements of due process and Rule 23(e).

^{1/} The Court’s previous order granting preliminary approval directed that the settlement administrator mail notices within 25 days of the date of the Order or February 15, 2022. Plaintiffs’ counsel explained the reason for the delay. (Mot.; Young Decl. ¶ 21.) According to Plaintiffs’ counsel, after CAC Services shared a preliminary data set, counsel noticed an issue and requested a delay until resolution of the issue. (Id.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

IV. Fairness of the Proposed Class Settlement

Rule 23(e) requires a proposed class action settlement be “fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (quoting *Hanlon*, 150 F.3d at 1026). The Court evaluates the settlement based on factors such as: (1) strength of plaintiff’s case; (2) risk, expense, complexity, and likely duration of further litigation; (3) risk of maintaining class action status throughout the trial; (4) amount offered in settlement; (5) extent of discovery completed and stage of the proceedings; (6) experience and views of counsel; and (7) class member reactions to the proposed settlement. *Id.*

“[T]he settlement may not be the product of collusion among the negotiating parties.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992)). “[T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027.

A. Amount Offered in the Settlement Agreement

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is [thus] not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. Here, the settlement agreement provides a settlement fund in the sum of \$385,000.

The settlement fund would be used to pay for: (i) payments to 39 class members based on qualifying shifts established by payroll records^{2/}; (ii) PAGA penalties (\$4,000) paid to the California Labor and Workforce Development Agency (\$3,000) and class members (\$1000) ; (iii) 2 service awards of \$5,000 each for Named Plaintiffs; (iv) class counsel’s attorneys’ fees

^{2/} Defendants are obligated to pay their share of payroll taxes. (Young Decl. ¶ 16.) Class members’ individual settlement payments will be allocated 20% to unpaid wages subject to withholdings for which an IRS Form W-2 will be issued, 40% to interest, and 40% to penalties under the California Labor Code for which an IRS Form 1099 will be issued. (SA ¶ 47.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

(\$96,250) and costs (\$6,243.10); and (v) settlement administration costs (\$5,000). (Mot.; Pls.’ Memo. at 12-15; SA ¶¶ 22-55.) CAC Services will distribute funds to class members by mailing individual checks and no claim form is required. (Dkt. 37-1; Young Decl. ¶ 18; SA ¶¶ 100-102.) If any checks remain uncashed, any leftover funds will be distributed cy pres to the Loyola Law School Worker’s Rights Clinic in Los Angeles, California. (SA ¶¶ 26, 106.)

The Court previously concluded that the settlement fund, which amounts to approximately 56% of the total damages that class members could have recovered on their principal claim for rest break violations, was reasonable. (Dkt. 37-1; Young Decl. ¶¶ 6-11.) Plaintiffs calculated that by July 2021 the total damages for the rest-break claim was \$679,664.51. (*Id.*) The parties stipulated in January 2022 that resolution towards settlement included the addition of the claim for failure to authorize meal breaks. (Dkts. 30-31.) The remaining claims are derivative. (Young Decl. ¶ 11.)

“Even a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case.” Millan v. Cascade Water Servs., 310 F.R.D. 593, 611 (E.D. Cal. 2015) (collecting cases); see Wolin v. Jaguar Land Power North America, LLC, 617 F.3d 1168, 1175 (9th Cir. 2010). “The Named Plaintiffs have been committed to the vigorous prosecution of this case and have reached a resolution they believe is in the best interests of the Settlement Class.” (Dkt. 37-1; Young Decl. ¶ 13.) For all of these reasons, the Court finds the settlement amount offered weighs in favor of final approval.

B. Strength of Plaintiff’s Case; Risk, Expense, Complexity, and Likely Duration of Further Litigation; and Extent of Discovery Completed

“When evaluating the strength of a case, the Court should evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties’ decisions to reach these agreements.” De Santos v. Jaco Oil Co., 2015 U.S. Dist. LEXIS 93410, at *16 (E.D. Cal. July 17, 2015). “This factor requires the Court to evaluate whether “the parties have sufficient information to make an informed decision about settlement.” Linney v. Cellular Alaska P’ship, 151 F.3d 1239, 1242 (9th Cir. 1998). In addition, “courts look for indications the parties carefully investigated the claims before reaching a resolution.” In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig., 2016 WL 6248426, at *13 (N.D. Cal. Oct. 25, 2016) (quotations and citation omitted).

Named Plaintiffs still have hurdles to overcome if this litigation proceeds: class certification, summary judgment, trial, and post-judgment appeals. “Plaintiffs recognize the inherent risks and uncertainty of litigation, including that the Class could receive nothing, and

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

understand the benefit of providing significant settlement payments to the Class now.” (Young Decl. ¶ 24.) While Plaintiffs “firmly believe in the strength of their claims,” Plaintiffs acknowledge that “Defendant’s defenses create a possibility the claims might not be certified or may fail on the merits.” (*Id.*) Specifically, the parties diverge on the interpretation of the California Supreme Court’s decision addressing the principal issue here, whether employers are required to permit their employees to take off-duty rest periods under Labor Code section 226.7 and IWC wage orders. See Augustus v. ABM Sec. Servs., Inc., 2 Cal. 5th 257, 260, 385 P.3d 823, 825 (2016).

In addition, it appears that the parties carefully investigated the claims before reaching a resolution. (Young Decl. ¶ 6.) Starting in August 2021, Plaintiffs served Defendants with Special Interrogatories and Requests for Production of Documents. (Young Decl. ¶ 5.) Plaintiffs obtained information that was critical to evaluating their case through their worksite and through their union, the United Steelworkers. (*Id.*) Additionally, Plaintiffs reviewed various documents including personnel files, workplace manuals, employee handbooks, organizational charts, and payroll and wage data information. (Young Decl. ¶ 5; Dkt. 36; Attach. 3, Barragan Decl.; Attach. 4, Calandrino Decl.) Among other activities, Plaintiffs communicated with co-workers about developments and participated in the July 2021 mediation. (Pls.’ Memo. at 11-12.) The Court finds that these factors weigh in favor of final approval.

C. Experience and Views of Counsel

“‘Great weight’ is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.” Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 528 (C.D. Cal. 2004) (citation omitted). The Court previously found that Named Plaintiffs’ counsel has had sufficient experience – both in class action litigation and cases arising under the California Labor Code – to appropriately assess the legal and factual issues in this matter and determine whether the proposed Settlement Agreement serves the interests of the class. (Pls.’ Memo. at 11-13; Young Decl. ¶¶ 25-28.) Therefore, counsel’s belief that the settlement agreement is in the best interests of the class weighs in favor of final approval. (*Id.*)

D. Collusion between the Parties

Courts must evaluate whether “fees and relief provisions clearly suggest the possibility that class interests gave way to self-interest,” thereby raising the possibility that the settlement agreement is the result of overt misconduct by the negotiators or improper incentives for certain class members at the expense of others. Staton, 327 F.3d at 961. There is no evidence of overt misconduct in this action. The parties participated in a mediation session in July 2021 and later

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

accepted the mediator's proposal in August 2021 to resolve the case. (Young Decl. ¶ 6.) The Settlement Agreement was the product of informed, arms-length negotiations between the parties. (Pls.' Memo. at 12.) Based on Plaintiffs' briefing and evidence, the Court finds that the settlement agreement is the product of non-collusive negotiations, and this weighs in favor of final approval.

E. Reaction of Class Members to Settlement

"[T]he absence of a large number of objections to the proposed class action settlement raises a strong presumption that the terms . . . are favorable to the class members." Nat'l Rural Telecomms. Coop., 221 F.R.D. at 529 (collecting cases). On February 15, 2022, class counsel conducted a live meeting with members of the settlement class in Carson, California to discuss the settlement and facilitate ratification of the going-forward collective bargaining agreement pursuant to California labor law, which is a material term of the settlement. (Young Decl. ¶ 22.) CAC Services stated that it has received no objections and no requests for exclusion. Therefore, this factor weighs in favor of settlement approval.

For the reasons discussed above, the Court finds the settlement agreement is fair, reasonable, and adequate. The Court therefore grants final approval of the settlement. The court now turns to class counsel's motion for fees, costs, and incentive payments.

V. Attorneys' Fees and Litigation Expenses

A. Attorneys' Fees

The Court is obligated to conduct a careful review of the reasonableness of requested attorneys' fees and costs. See In re Wash Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1302 (9th Cir. 1994). "[I]n common fund cases[,] the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, [and] courts have stressed that when awarding attorneys' fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs." Id. Plaintiffs' counsel seeks \$96,250 (25% of the common fund) in attorneys' fees of and costs of \$6,243.10. This constitutes 25% of the gross settlement fund.

In common fund cases, "where the settlement or award creates a large fund for distribution to the class, the district court has discretion to use either a percentage or lodestar method." Hanlon, 150 F.3d at 1029. "The percentage method means that the court simply awards the attorney a percentage of the fund sufficient to provide class counsel with a reasonable fee." Id. The percentage-of-recovery method is appropriate when a settlement produces a common fund for the benefit of the entire class. In re Bluetooth Headset Prods. Liab. Litig., 654

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

F.3d 935, 942 (9th Cir. 2011). The Ninth Circuit has established 25% of the common fund “as a benchmark award for attorney fees.” Id.; see also Adoma v. Univ. of Phx., Inc., 913 F. Supp. 2d 964, 981 (E.D. Cal. 2012).

The lodestar method can confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate.” In re Bluetooth, 654 F.3d at 945. Named Plaintiffs are represented by attorneys from two firms, Hadsell Stormer Renick & Dai LLP (“Hadsell Stormer”) and Gilbert & Sackman. (Dkt. 37-1.) The combined lodestar for the two firms at the time of the filing of this motion is \$106,817.50. (Id.)

Counsel from Hadsell Stormer, which include two partners, Randy Renick and Cornelia Dai, and a paralegal, worked for a total of 62.50 hours at various rates for a lodestar of \$45,202.50. (Dkt. 37-3; Renick Decl. ¶¶ 4-12; Mr. Renick has litigated more than 50 class actions (13.70 hours at billing rate of \$925.00); Ms. Dai is a 1999 law school graduate and specializes in wage and hour class actions (33.40 hours at billing rate of \$825.00); and the paralegal has nearly 20 years of experience (15.40 hours at billing rate of \$300.00).)

Counsel from Gilbert & Sackman, which include a shareholder, Joshua Young, an associate Mitzi Marquez-Avila, and a paralegal, worked a total of 93.1 hours with a combined lodestar of \$61,690. (Dkt. 37-2; Young Decl. ¶¶ 6-15; Young has 17 years of experience representing workers and/or unions in state and federal courts (61.4 hours at billing rate of \$750); Mitzi Marquez- Avila is a 2019 law school graduate (31.1 hours at billing rate of \$500); paralegal (0.6 hours at billing rate of \$150).) Gilbert & Sackman described their hours as follows: 8.2 hours performing due diligence and research; 51.6 hours reviewing documents and reaching resolution through mediation; 1.8 hours drafting and serving discovery requests; and 31.5 hours preparing and facilitating the settlement agreement. (Id. ¶ 14.) The firm anticipates logging 20 hours based on preparation of the two present motions and resolution of any objections to the settlement agreement. (Id. ¶ 17.)

The Court finds the requested attorney’s fees to be reasonable based on the percentage-of-the-fund analysis. The notices to class members stated that Plaintiffs’ counsel will seek up to one-third of the recovery. The Court acknowledges that class counsel have performed work on a contingency basis. (Dkt. 37-1; Young Decl. ¶18; Renick Decl. ¶ 28.) “Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work.” Ching v. Siemens Indus. Inc., 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014). Considering the results achieved, time expended, risk of litigation, skill required, quality of work, contingent nature of the fee, financial burden carried by class counsel, and awards made in similar cases, as well as the lack of class member objections to the requested

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

fee award, the Court finds that the requested attorneys' fee award is reasonable. The Court therefore grants Plaintiffs' request for \$96,250 in attorneys' fees to be awarded from the settlement fund.^{3/}

B. Litigation Costs

Plaintiffs' counsel also request reimbursement for \$6,243.10 in litigation expenses. "There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." Ontiveros v. Zamora, 303 F.R.D. 356, 375 (E.D. Cal. 2014). The Settlement Agreement provides for the reimbursement of reasonable costs. (Dkt. 28.) Class counsel filed itemized billing statements identifying the following costs: \$5,913.70 (Gilbert & Sackman) for document production, travel, legal research, engaging a mediator, photocopying, postage, filing fees, mediation fees; messenger and process services; and \$329.40 (Hadsell & Stormer) for photocopying, scanning, and process server fees. (Dkt. 37; Young Decl., ¶¶ 21-27; Renick Decl., ¶ 28.)

Based on the evidence presented, the Court concludes that the requested costs are reasonable. See, e.g., Greer v. Dick's Sporting Goods, Inc., 2020 U.S. Dist. LEXIS 168923, at *35 (E.D. Cal. Sept. 15, 2020). The Court therefore approves Plaintiffs' request for \$6,243.10 in costs to be awarded from the settlement fund.

C. Administrative Expenses

CAC Services request settlement administration expenses in the amount of \$5,000. CAC Services was retained to perform several duties including to develop and execute a notice program targeting potential settlement class members, provide timely notice by first class mail; and make settlement payment distributions in accordance with the agreement. (Dkt. 38-1.) As noted previously, CAC Services sent notices to settlement class members in the manner approved by the Court in the Preliminary Approval Order. (Dkt. 38; Johnson Decl.)

Plaintiffs' counsel attests that "I believe that CAC provides the best services and does so at the lowest cost to class members" and that CAC Services "properly distributed the Class Notice to Class Members and has performed its duties in accordance with the Settlement terms." (Young Decl. ¶¶ 17- 20.) Based on the declarations in support of these costs and the evidence submitted, the Court awards administration expenses to CAC Services in the amount of \$5,000 from the settlement fund.

^{3/} In granting the requested 25% benchmark, the Court declines to rule on whether the proposed billing rates of class counsel are fair and reasonable.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 21-2955 PA (MRWx)	Date	May 15, 2022
Title	Larry Barragan, et al. v. Kinder Morgan, Inc., et al.		

D. Named Plaintiffs' Incentive Awards

Plaintiffs also request that the Court approve incentive payments in the amount of \$5,000, which constitutes approximately 2.5% percent of the gross settlement amount. The Court has already concluded that the awards are appropriate. (Dkt. 35 at 9-10.) Named Plaintiffs invested 20-25 hours into the investigation, prosecution, and the settlement of the case. (Dkt. 36-3; Barragan Decl.; 36-4, Calandrino Decl.)

Courts have generally found incentive payments up to \$5,000 to be reasonable. See, e.g., In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 463 (9th Cir.2000); In re SmithKline Beckman Corp. Sec. Litig., 751 F.Supp. 525, 535 (E.D.Pa.1990). Here, the amount sought is reasonable and fair based on the services provided and risks incurred by each named plaintiff during the course of the litigation. Based on Plaintiffs' briefing and evidence submitted, the Court finds an incentive award of \$5,000 to each named plaintiff is reasonable. The Court therefore grants Plaintiffs' request for an incentive payment of \$5,000 to be awarded from the settlement fund.

Conclusion

For the reasons discussed above, the Court grants Plaintiffs' Motions for Final Approval and Motion for Attorneys' Fees and Costs. The Court grants final approval of the Settlement Agreement. The Court authorizes service payments to Larry Barragan and Frank Calandrino of \$5,000 each. The Court awards attorneys' fees of \$96,250 and litigation costs of \$6,243.10 to Plaintiffs' counsel, and payment of \$5,000 to CAC Services Group, LLC, as the settlement administrator. The Court orders Defendants to provide the entirety of the Settlement Fund to the settlement administrator for disbursement in accordance with the terms of the Settlement Agreement. The Court approves Loyola Law School Worker's Rights Clinic as the cy pres recipient. The Court will enter a judgment consistent with this order.

IT IS SO ORDERED.