

James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff
WILLIAM MATNEY-TATE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KASPER LEUZINGER, MICHAEL ALLEN
JENSEN, WILLIAM MATNEY-TATE, and
RICARDO AMEZCUA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

GARDNER TRUCKING, INC., a California
corporation, GARDNER TRUCKING
CONVERSION, LLC, a California Limited
Liability Company; CRST EXPEDITED, INC.,
an Iowa Corporation; CRST THE
TRANSPORTATION SOLUTION, INC., an
entity of unknown formation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 4:21-cv-04952-YGR

Consolidated with:
4:21-cv-07474-YGR
4:21-cv-07741-YGR
4:22-cv-06501-YGR

[Related on July 27, 2021 to *Castro v. Gardner
Trucking, Inc.*, N.D. Cal. Case No. 4:20-cv-
05473-YGR]

FRCP 23 CLASS ACTION

**NOTICE OF ENTRY OF ORDER
GRANTING FINAL APPROVAL AND
JUDGMENT**

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the Court entered an Order granting Final Approval of the Class
3 Action Settlement and entered Judgment thereon. Attached as Exhibit A is a true and correct copy of
4 such Order and Judgment.

5
6 DATED: March 3, 2025

JAMES HAWKINS APLC

7
8 /s/ Gregory Mauro

GREGORY MAURO

Attorneys for Plaintiff

WILLIAM MATNEY-TATE

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court, for the Northern District of California using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the CM/ECF system.

Dated: March 3, 2025

/s/ Gregory Mauro

Gregory Mauro, Esq.

Via LWDA Website Only

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Ste 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**KASPER LEUZINGER, MICHAEL ALLEN
JENSEN, WILLIAM MATNEY-TATE, AND
RICARDO AMEZCUA ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,**

Plaintiffs,

v.

**GARDNER TRUCKING, INC., A
CALIFORNIA CORPORATION; GARDNER
TRUCKING CONVERSION, LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY; CRST EXPEDITED, INC., AN
IOWA CORPORATION; CRST THE
TRANSPORTATION SOLUTION, INC., AN
ENTITY OF UNKNOWN FORMATION; AND
DOES 1 THROUGH 50, INCLUSIVE,**

Defendants.

CASE No. 21-cv-04952-YGR

**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT;**

**GRANTING IN PART MOTION FOR ATTORNEYS'
FEES, COSTS, AND SERVICE AWARDS;**

**DENYING *EX PARTE* APPLICATION FOR RELIEF;
AND**

JUDGMENT

Dkt. Nos. 141, 144

The Court previously granted a motion for preliminary approval of the class action settlement between plaintiffs Kasper Leuzinger, Michael Allen Jensen, William Matney-Tate, and Ricardo Amezcua, and defendants Gardner Trucking, Inc., a California corporation; Gardner Trucking Conversion, LLC, a California Limited Liability Company; CRST Expedited, Inc., an Iowa Corporation; and CRST The Transportation Solution, Inc. (Dkt. No. 130.) As directed by the Court's preliminary approval order, on November 27, 2024, plaintiffs filed their unopposed motion for settlement approval and attorneys' fees, costs, and service awards. (Dkt. No. 141.) The Court held a hearing and took arguments from the parties on February 18, 2025.

Having considered the motion briefing, the terms of the Amended Settlement Agreement, the objections and response thereto, the arguments of counsel, and the other matters on file in this

1 action, the Court **GRANTS** the motion for final approval. The Court finds the settlement fair,
 2 adequate, and reasonable. The provisional appointments of the class representatives and class
 3 counsel are confirmed.

4 The Motion for Attorneys' Fees, Costs, and Incentive Awards is **GRANTED IN PART**. The
 5 Court **ORDERS** that class counsel shall be paid \$1,093,500 in attorneys' fees, which is 27% of the
 6 settlement fund, and \$31,891.93 in litigation costs and class representative and named plaintiffs
 7 Kasper Leuzinger, Michael-Allen Jensen, William Matney-Tate, and Ricardo Amezcua shall each be
 8 paid a \$10,000 incentive award.

9 **I. BACKGROUND**

10 **A. Procedural History**

11 On February 6, 2020, proposed intervenor Ramos filed a Private Attorneys General Act
 12 ("PAGA") action against defendants in San Bernardino Superior Court. (Dkt. No. 106-3, Ex. 2.)

13 On June 10, 2020, proposed intervenor Castro filed a putative class action, including Fair
 14 Labor Standards Act ("FLSA") claims, in Monterey County Superior Court against defendants.
 15 (*Id.*, Ex. 3.)

16 On November 20, 2020, plaintiff Amezcua filed a putative class action in Alameda County
 17 Superior Court against defendants for various wage and hour claims. (Case No. 4:22-cv-06501,
 18 Dkt. No. 1-2 at 5-28.) Amezcua submitted a PAGA Notice to the Labor & Workforce
 19 Development Agency on the same date and later filed an amended complaint adding a claim for
 20 civil penalties under PAGA on November 18, 2021. (*Id.*)

21 On June 28, 2021, plaintiff Kasper Leuzinger filed a putative class action in this Court,
 22 alleging the same claims as Amezcua, along with a claim alleging violation of the FLSA for
 23 failing to pay all hours worked. (Dkt. No. 1.) The Court then consolidated and then split this
 24 action with another similar action. (Dkt. Nos. 26, 29, 32, 33; Case No. 20-5473 at Dkt. No. 29.)

25 After unsuccessful mediation attempts, the parties finally reached a settlement prior to class
 26 certification with the assistance of an experienced mediator Hon. Amy D. Hogue (Ret.). The
 27 Amended Settlement Agreement, attached hereto as **Exhibit A**, defines two classes:
 28

1 Expedited Settlement Class: All California resident truck driver
 2 employees who worked for CRST as part of what is now known as
 3 Expedited Solutions at any time from August 10, 2017 through
 4 February 29, 2024 (the “Expedited Class Period”). (Agreement, ¶ 9.)

5 Gardner-Dedicated West Settlement Class: All California resident
 6 truck driver employees who worked for CRST as part of what is now
 7 known as Dedicated West at any time from April 6, 2016 through
 8 February 29, 2024, (the “Gardner-Dedicated West Class Period”).
 9 (Agreement, ¶ 12.)

10 (Collectively “the Settlement Class”). In its preliminary approval order, the Court conditionally
 11 certified the Settlement Class and provisionally appointed Setareh Law Group and James Hawkins
 12 APLC as Class Counsel, plaintiffs Kasper Leuzinger, Michael Allen Jensen, William Matney-
 13 Tate, and Ricardo Amezcua as class representatives, and ILYM as the class administrator. (Dkt.
 14 No. 130 at 8-10.) Before preliminarily approving the settlement, the Court held a hearing and
 15 expressed concerns with the presence of the phrase “related to” in the initial settlement
 16 agreement’s claims release language, the request for attorneys’ fees of 33%, and the complexity of
 17 the proposed summary notice. (*Id.* at 4.) The parties amended, then amended the settlement
 18 agreement addressing the Court’s concerns claims release and notice complexity concerns. (Dkt.
 19 No. Dkt. No. 127 ¶¶ 2, 3, Ex. A., Ex. C; Dkt. No. 128 ¶ 3.) The parties now move to approve the
 20 Amended Settlement Agreement.

21 **B. Terms of the Amended Settlement Agreement**

22 Under the terms of the Amended Settlement Agreement, defendants will pay \$4,050,000 into
 23 a common settlement fund, without admitting liability. This amount includes attorneys’ fees and
 24 costs, the cost of class notice and settlement administration, the class representative’s service award,
 25 PAGA penalties, and payroll taxes on the portion of the settlement payments deemed wages.

26 **1. Attorneys’ Fees and Costs**

27 Under the Amended Settlement Agreement, Plaintiff’s counsel agreed to seek up to
 28 \$1,215,000.00 in attorneys’ fees and no more than \$35,000 in litigation costs. The common
 settlement fund also includes a provision for \$100,000 in settlement administration costs; and up to
 \$10,000 to be paid to plaintiffs Kasper Leuzinger, William Matney-Tate, Michael Allen Jensen, and

Ricard Amezcua as an incentive award in exchange for a general release of all claims against defendants.

2. Class Relief

Plaintiff's counsel seeks fees of 30% of the settlement fund. The Court rarely, if ever approves such a high percentage. As explained further below, the Court reduces the fee award to \$1,093,500, 27% of the settlement fund, which is consistent, albeit slightly greater than, the benchmark in the Ninth Circuit. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011).

After deductions from the common fund for fees, costs, and service incentive awards, approximately \$2,584,608.07 will remain to be distributed among the participating class members. Class members will be paid according to pro rata based on the total number of workweeks each worked during the applicable class period. Dividing this amount across the 12,487 participating class members would yield an average recovery of approximately \$206.98 per class member. The Amended Settlement Agreement provides that no amount will revert to defendants.

3. Cy Pres/Remainder

The Amended Settlement Agreement provides that when checks mailed to participating class members are not redeemed or deposited within 180 calendar days, such funds will be tendered to the State of California Unclaimed Property Fund in the name of Settlement Class Member who did not cash the check. In exchange for the settlement awards, class members will release claims against defendants as set forth in the Amended Settlement Agreement at section E.

C. Class Notice and Claims Administration

The Amended Settlement Agreement is being administered by ILYM. Following the Court's preliminary approval and conditional certification of the settlement, the Class Administrator mailed the approved notice packet to the class members via U.S. First Class mail. (Dkt. No. 143 ¶ 7.)

The Class Administrator also established a settlement website (the "Settlement Website") at www.ilymgroup.com/gardnertrucking, including the settlement notices, the procedures for class members to submit claims or exclude themselves, a contact information page that includes addresses and telephone numbers for the claim administrator and the parties, the Amended Settlement

1 Agreement, and the signed order of preliminary approval.

2 Class members were given until January 21, 2025, to object to or exclude themselves from
3 the Amended Settlement Agreement. Out of 12,495 total class members, eight (8) persons filed
4 timely requests to opt out of the Settlement Class. One class member did not submit a timely opt-out
5 notice and moves, now, for an extension of time to file an exclusion notice. (Dkt. No. 144.)

6 **II. FINAL APPROVAL OF SETTLEMENT**

7 **A. Legal Standard**

8 A court may approve a proposed class action settlement of a class only “after a hearing and
9 on finding that it is fair, reasonable, and adequate,” and that it meets the requirements for class
10 certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not
11 address whether the settlement is ideal or the best outcome, but only whether the settlement is fair,
12 free of collusion, and consistent with plaintiff’s fiduciary obligations to the class. *See Hanlon v.*
13 *Chrysler Corp.*, 150 F.3d at 1027. The *Hanlon* court identified the following factors relevant to
14 assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk, expense,
15 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
16 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
17 the stage of the proceeding; (6) the experience and views of counsel; (7) the presence of a
18 government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at
19 1026 (citation omitted); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
20 2004).

21 Settlements that occur before formal class certification also “require a higher standard of
22 fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such
23 settlements, in addition to considering the above factors, a court also must ensure that “the
24 settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset*
25 *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

26 **B. Analysis**

27 **1. The Settlement Class Meets the Prerequisites for Certification**

1 As the Court found in its order granting preliminary approval and conditional certification of
2 the settlement class herein, the prerequisites of Rule 23 have been satisfied purposes of certification
3 of the Settlement Class. (See Dkt. No 130.)

4 2. Adequacy of Notice

5 A court must “direct notice [of a proposed class settlement] in a reasonable manner to all
6 class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1). “The class must be
7 notified of a proposed settlement in a manner that does not systematically leave any group without
8 notice.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate
9 notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to
10 apprise the Class members of the proposed settlement and of their right to object or to exclude
11 themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate,
12 and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
13 requirements of due process and any other applicable requirements under federal law. *Phillips*
14 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires “notice reasonably
15 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
16 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*
17 *Co.*, 339 U.S. 306, 314 (1950).

18 The Court found the parties’ proposed notice procedures provided the best notice practicable
19 and reasonably calculated to apprise Class members of the settlement and their rights to object or
20 exclude themselves. (Dkt. No. 130 at 9.) Pursuant to those procedures, the Class Administrator
21 carried out that program. (Dkt. No. 143.) The Class Administrator reports that 673 notice packets
22 have been deemed undeliverable and the rest have been sent to class members. (Dkt. No. 143 ¶ 10.)
23 Initially, 778 notice packets were returned to the Class Administrator as undeliverable. The
24 administrator then performed a computerized skip-trace on those 778 packets and obtained 105
25 updated addresses. (*Id.* ¶ 8.) The administrator then re-mailed those packets to the class members
26 via U.S. First Class Mail. (*Id.*) The 673 undeliverable packets did not yield any updated address,
27 notwithstanding the administrator’s skip-tracing efforts. (*Id.* ¶ 10.)
28

Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

3. *The Settlement Is Fair and Reasonable*

As the Court previously found in its order granting preliminary approval, the *Hanlon* indicate the settlement here is fair and reasonable and treats class members equitably relative to one another. (Dkt. No. 130 at 15.)

The reaction of the class was overwhelmingly positive. The Court received no objections and eight opt-outs as of the January 21, 2025 deadline. These opt-outs constitute about 0.06% of total class members, and 0.07% of the 11,814 class members that received notice. “[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.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043 (N.D. Cal. 2008) (citation omitted); *see also Churchill Vill.*, 361 F.3d at 577 (holding that approval of a settlement that received 45 objections (0.05%) and 500 opt-outs (0.56%) out of 90,000 class members was proper).

In its preliminary approval order, the Court approved the proposed plan of allocation. (Dkt. No. 130 at 10.) That plan is that class members will receive a settlement share unless they submit a timely opt-out by January 21, 2025. The Court finds the plan of allocation to be fair and reasonable and to treat class members equitably and therefore approves that plan of allocation.

4. *Objections*

No individuals submitted objections. (Dkt. No. 143 ¶ 12.)

5. *Certification Is Granted and the Settlement Is Approved*

After reviewing all of the required factors, the Court finds the Amended Settlement Agreement to be fair, reasonable, and adequate, and certification of the Settlement Class as defined therein to be proper. The following persons are excluded from the Settlement Class: all persons who timely excluded themselves from the Settlement Class, as identified in **Exhibit B** hereto. Further, as the Court noted in its preliminary approval order, the class definition does not include yardsmen. (Dkt. No. 130 at 6.)

The *cy pres* recipient, State of California Unclaimed Property Fund, is **APPROVED**.

III. MOTION FOR ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE AWARDS

Attorneys' fees and costs may be awarded in a certified class action under Federal Rule of Civil Procedure 23(h). Such fees must be found "fair, reasonable, and adequate" in order to be approved. Fed. R. Civ. P. 23(e); *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). To "avoid abdicating its responsibility to review the agreement for the protection of the class, a district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement." *Id.* at 963. "[T]he members of the class retain an interest in assuring that the fees to be paid class counsel are not unreasonably high," since unreasonably high fees are a likely indicator that the class has obtained less monetary or injunctive relief than they might otherwise. *Id.* at 964.

Class counsel requests an attorneys' fee award of \$1,215,000, or 30% of the settlement fund amount. This amount would be approximately 1.94x of counsels' lodestar. Defendants do not oppose the fee request.

The Court analyzes an attorneys' fee request based on either the "lodestar" method or a percentage of the total settlement fund made available to the class, including costs, fees, and injunctive relief. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). The Ninth Circuit encourages courts to use another method as a cross-check in order to avoid a "mechanical or formulaic approach that results in an unreasonable reward." *In re Bluetooth*, 654 F.3d at 944–45 (citing *Vizcaino*, 290 F.3d at 1050–51.)

Under the lodestar approach, a court multiplies the number of hours reasonably expended by the reasonable hourly rate. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[A] court calculates the lodestar figure by multiplying the number of hours reasonably expended on a case by a reasonable hourly rate. A reasonable hourly rate is ordinarily the 'prevailing market rate [] in the relevant community.'"). Under the percentage-of-the-fund method, courts in the Ninth Circuit "typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *In re Bluetooth*, 654 F.3d at 942 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)). The benchmark should be adjusted when the percentage recovery would be "either too small or too large in light of the hours devoted to the case or other relevant

factors.” *Six (6) Mexican Workers*, 904 F.2d at 1311. When using the percentage-of-recovery method, courts consider a number of factors, including whether class counsel “‘achieved exceptional results for the class,’ whether the case was risky for class counsel, whether counsel’s performance ‘generated benefits beyond the cash settlement fund,’ the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (quoting *Vizcaino*, 290 F.3d at 1047-50. “[T]he most critical factor [in determining appropriate attorney’s fee awards] is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

Using the percentage-of-the-fund method, the Court finds the attorneys’ fees sought are too high.

Here, the gross settlement value is \$4,050,000.00. Plaintiffs’ counsel request attorney fees of \$1,215,000.00, which would come to 30% of the total. This amount is above the Ninth Circuit’s 25% benchmark. Counsel argues that they should be awarded 30% of the settlement value because one of the Ninth Circuit cases affirming the 25% benchmark applied Washington law. (Dkt. No. 141-1 at 12 (citing *Vizcaino*, 290 F.3d at 1047).) Instead, counsel argues that the Court should apply California law here, and adds that the California Supreme Court has approved fees up to 33.33 percent. (*Id.* (citing *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016).) The California Supreme Court, in *Laffitte*, does not set a floor of 33.33 percent, however. It holds only that those fees were appropriate in that circumstance, and that courts have discretion when awarding percentage of the fund fees. *See Laffitte*, 1 Cal. 5th at 506. Here, counsels’ work on the case does not warrant such a high fee award. While counsel achieved a settlement that is fair, free of collusion, and consistent with plaintiff’s fiduciary obligations to the class, the result is not extraordinary and does not deserve an extraordinary award. Further, when presented with an opportunity to make their case for the requested fees at the February 18 final approval hearing, plaintiffs’ counsel made the legal argument outlined above, but cited no specific factual justifications for an extraordinary fee award.

1 Based on the foregoing, the Court finds an award of attorneys' fees in the amount of
2 \$1,093,500, or 27% of the settlement fund, to be fair, reasonable, and adequate.

3 **B. Costs Award**

4 Class counsel is entitled to reimbursement of reasonable out-of-pocket expenses. Fed. R.
5 Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that attorneys may
6 recover reasonable expenses that would typically be billed to paying clients in non-contingency
7 matters). Costs compensable under Rule 23(h) include "nontaxable costs that are authorized by
8 law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, class counsel seeks reimbursement
9 for litigation expenses, and provides records documenting those expenses, in the amount of
10 \$31,891.93. The Court finds this amount reasonable, fair, and adequate.

11 **C. Incentive Award**

12 The district court must evaluate named plaintiff's requested award using relevant factors
13 including "the actions the plaintiff has taken to protect the interests of the class, the degree to
14 which the class has benefitted from those actions . . . [and] the amount of time and effort the
15 plaintiff expended in pursuing the litigation." *Staton*, 327 F.3d at 977. "Such awards are
16 discretionary . . . and are intended to compensate class representatives for work done on behalf of
17 the class, to make up for financial or reputational risk undertaken in bringing the action, and,
18 sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. West*
19 *Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir. 2009). The Ninth Circuit has emphasized that
20 district courts must "scrutiniz[e] all incentive awards to determine whether they destroy the
21 adequacy of the class representatives." *Radcliffe v. Experian Info. Solutions*, 715 F.3d 1157, 1163
22 (9th Cir. 2013).

23 Here, the class representatives came forward to represent the interests of over 12,000
24 others, with very little personally to gain, class representatives assisted counsel with the
25 investigation and prosecution of the claims and risked a judgment for attorneys' fees and costs.
26 Because the laws are not self-enforcing, it is appropriate to give incentives to those who come
27 forward with little to gain and at personal risk and who work to achieve a settlement that confers
28 substantial benefits on others. Thus, the Court approves the requested incentive award payment

for plaintiffs Kasper Leuzinger, Michael-Allen Jensen, William Matney-Tate, and Ricardo Amezcua.

IV. *EX PARTE* APPLICATION FOR RELIEF

Class member Faizah Dean (the “applicant”) applies for an extension to the exclusion deadline so she may opt out of the class and maintain a lawsuit pending in state court. (Dkt. No. 144.) The deadline to submit an exclusion request in this case was January 10, 2025. The applicant submitted an application for extension on February 13, 2025. (Dkt. No. 144.)

Local Rule 7-10 permits the filing of an *ex parte* motion if authorized by a statute, Federal Rule, local rule, or standing order. Applicant moves for relief under Federal Rule of Civil Procedure 6(b), 23, and 60(b)(6).

At the outset, applicant does not satisfy Local Rule 7-10 because she provides no authority for the proposition that a non-party can receive *ex parte* relief under Federal Rules 6, 23, or 60 to receive a deadline extension. All of the cases she cites for authority are from other districts analyzing distinct local rules. (See Dkt. No. 144 at 5.) Further, even if the *ex parte* application were authorized by the Local Rules, the applicant has not demonstrated excusable neglect.

In the context of a tardy opt-out from a class action settlement, we have specifically identified as the relevant ‘excusable neglect’ factors the degree of compliance with the best practicable notice procedures; when notice was actually received and if not timely received, why not; what caused the delay, and whose responsibility was it; how quickly the belated opt-out request was made once notice was received; how many class members want to opt out; and whether allowing a belated opt out would affect either the settlement or finality of the judgment.”

In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig., 895 F.3d 597, 618 (9th Cir. 2018) (cleaned up). Here, the class administrator followed the best practicable notice procedures and submitted declarations affirming that notice was mailed to the last known address of the applicant and emailed to the email address on record for her. (Dkt. No. 146 ¶ 2.) Although the administrator received an “undeliverable” notice in response to its first mailed notice, it then performed a skip-trace and sent the notice to the new address uncovered via skip-trace. (*Id.* ¶¶ 4-

8.) The administrator received no “undeliverable” notice to their email. (*Id.* ¶ 3.) The applicant submits that she never received these notices, but provides no declaration substantiating that claim, or detailing how she verified that she never received the notices. Moreover, and more importantly, applicant’s counsel was on notice that this case was settling. As recently as November 11, 2024, defendants’ counsel emailed applicant’s counsel discussing the “pending approval of the settlement reached in *Leuzinger*” (Dkt. No. 145-7 at 1.)¹ Applicant’s counsel argues that it was unclear at that time whether the *Leuzinger* settlement precluded the applicant’s state law claims in another court, but that is of no matter. The relevant question is whether applicant’s counsel was on notice of the pending settlement in this matter and had time to submit an exclusion request before the deadline elapsed.² Applicant, therefore, does not demonstrate “excusable neglect.” *See In re Volkswagen*, 895 F.3d at 618.

V. CONCLUSION

Based upon the foregoing, the motion for final approval of class settlement is **GRANTED**. The motion for attorneys’ fees, costs, and service awards is **GRANTED IN PART** as follows: Class Counsel is awarded \$1,093,500 in attorneys’ fees and \$31,891.93 in litigation costs. Plaintiffs Kasper Leuzinger, Michael-Allen Jensen, William Matney-Tate, and Ricardo Amezcua are granted an incentive award of \$10,000 each.

Without affecting the finality of this order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this order and the Settlement.

¹ This email communication was one of many between defendants’ counsel and applicant’s counsel in which they discussed the pending settlement in *Leuzinger*. (*See also* Dkt. Nos. 145-2, -3, -4, -5, and -6.)

² Applicant’s counsel also argues that the notice fails to satisfy due process requirements under *McCubrey v. Boise Cascade Home & Land Corp.*, 71 F.R.D. 62, 68 (N.D. Cal. 1976). This argument does not persuade. *McCubrey* focuses on whether the class members had an “adequate basis for informed decision-making.” *Id.* Here, applicant was represented by counsel who was on notice of the pending settlement well in advance, and could have explained the consequences of the decisions outlined in the notice.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that final judgment is **ENTERED** in accordance with the terms of the Settlement, the Order Granting Preliminary Approval of Class Action Settlement filed on September 17, 2024, and this order. This document will constitute a final judgment (and a separate document constituting the judgment) for purposes of Rule 58, Federal Rules of Civil Procedure.

The parties shall file a post-distribution accounting in accordance with this District's Procedural Guidance for Class Action Settlements no later than **August 29, 2025**. The Court **SETS** a compliance deadline on **September 5, 2025** on the Court's 9:01 a.m. calendar to verify timely filing of the post-distribution accounting.

IT IS SO ORDERED.

This terminates Docket Nos. 141, 144.

Dated: February 27, 2025


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

United States District Court
Northern District of California