

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

**RAMONA J. HOGUE, individually and  
on behalf of all others similarly situated,**

**Plaintiff,**

**v.**

**YRC, INC. d.b.a. YRC FREIGHT, and  
DOES 1 through 20,**

**Defendants.**

**Case No.: EDCV 16-01338-CJC(JEMx)**

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT  
[Dkt. 34] AND GRANTING  
PLAINTIFF'S MOTION FOR  
ATTORNEYS' FEES AND COSTS  
[Dkt. 32]**

**I. INTRODUCTION**

On May 19, 2016, Plaintiff Ramona Hogue filed this putative wage-and-hour class action on behalf of line-haul truck drivers employed by Defendant YRC, Inc. ("YRC"). (Dkt. 1-1 [Complaint, hereinafter "Compl."].) After years of investigation and litigation,

1 the parties reached a \$700,000 non-reversionary class action settlement (“Settlement  
2 Agreement”). On November 28, 2018, the Court granted provisional certification of the  
3 class for settlement purposes and preliminarily approved the Settlement Agreement.  
4 (Dkt. 31.) Before the Court are Plaintiff’s unopposed motions for final approval of the  
5 Settlement Agreement and for attorneys’ fees and costs. (Dkts. 32, 34.) For the  
6 following reasons, the motions are **GRANTED**.

## 7 8 **II. BACKGROUND**

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10 Defendant YRC is a transportation company that operates 21 trucking terminals in  
11 California. Plaintiff Ramona Hogue was employed as a line-haul driver for YRC from  
12 approximately 2006 until 2009, and from approximately 2014 through the present.  
13 (Compl. ¶ 4.) Plaintiff claims that YRC failed to compensate her and similarly situated  
14 truck drivers for time associated with rest breaks and non-driving tasks. (*Id.* ¶ 1.)  
15 According to Plaintiff, YRC compensated its line-haul drivers based on a piece-rate  
16 “cents per mile” formula with hourly pay available only for certain tasks. (*Id.* ¶ 19.)  
17 YRC allegedly failed to separately compensate its drivers for their ten-minute rest periods  
18 and non-driving tasks, such as pre- and post-trip inspections and completion of work-  
19 related paperwork. (*Id.* ¶ 23.) YRC also purportedly failed to reimburse its drivers for  
20 mandatory use of their personal cell phones while on the job. (*Id.* ¶ 28.)

21  
22 Based on this alleged conduct, Plaintiff filed the instant action on May 19, 2016 in  
23 San Bernardino County Superior Court against YRC. (*See generally* Compl.) YRC  
24 removed the action to this Court on June 23, 2016. (Dkt. 1.) Plaintiff asserted six state  
25 law claims for (1) failure to pay separately and hourly for time spent on rest breaks and  
26 other non-driving tasks, (2) failure to provide paid rest periods and pay missed rest break  
27 premiums, (3) failure to issue accurate wage statements, (4) failure to reimburse  
28 necessarily incurred business expenses, (5) unfair and unlawful business practices in

1 violation of California Unfair Competition Law, and (6) penalties under the California  
2 Private Attorneys General Act (“PAGA”). (*See generally* Compl.) She sought to certify  
3 a class comprised of current and former YRC line haul truck drivers who held California  
4 drivers’ licenses, whose home terminals were in California, and who YRC paid on a  
5 “cents per mile” basis. (*Id.* ¶ 30.)

6  
7 The parties have engaged in substantial discovery and conducted two mediations.  
8 Through discovery, the parties exchanged documents relevant to YRC’s compensation  
9 and rest break policies, line-haul drivers’ job duties and requirements, and putative class  
10 members’ wage statements. (Dkt. 29-1 [Declaration of Craig J. Ackerman, hereinafter  
11 “Ackerman Decl. I”] ¶ 9.) On March 20, 2018, the parties participated in a full-day  
12 mediation with experienced wage-and-hour class action mediator Joel M. Grossman, Esq.  
13 (*Id.* ¶ 11.) The parties were unable to reach a resolution at the mediation, largely because  
14 YRC believed that legislation would soon be enacted that retroactively preempted state  
15 rest break laws for truckers. (*Id.* ¶ 12.)

16  
17 When the legislation did not pass, YRC decided to participate in a second  
18 mediation on September 5, 2018. The second mediation was before Lisa Klerman, Esq.,  
19 another mediator specializing in wage-and-hour and employment law cases. (*Id.* ¶ 13.)  
20 The parties reached a class-wide agreement in principle and, after several months of  
21 further discussion, finalized and executed the Settlement Agreement for which they now  
22 seek final approval. Under the Settlement Agreement, YRC shall be released of all  
23 claims asserted in the lawsuit in exchange for YRC’s agreement to pay a non-  
24 reversionary settlement amount of \$700,000, including attorneys’ fees, litigation costs,  
25 settlement administration expenses, PAGA penalties, and Plaintiff’s proposed incentive  
26 award. (Dkt. 29-5 [Settlement Agreement].) The remaining settlement amount of  
27 approximately \$430,000 will be distributed pro rata based on the number of weeks  
28

1 worked during the class period as a proportion of the total weeks worked by all class  
2 members.

3  
4 On November 28, 2018, the Court granted provisional certification of the class for  
5 settlement purposes<sup>1</sup> and preliminary approval of the Settlement Agreement. (Dkt. 31.)  
6 It also appointed CPT Group as Settlement Administrator. (*Id.*) Shortly thereafter, CPT  
7 Group gathered addresses for the 223 class members and provided notice via mail. (Dkt.  
8 34-1 [Declaration of Tarus Dancy, hereinafter “Dancy Decl.”] ¶¶ 4–8.) CPT Group  
9 received three requests from individuals requesting inclusion as part of the settlement  
10 class, and defense counsel approved two of the requests, increasing the total class size to  
11 225. (*Id.* ¶ 11.) On average, the class members will receive a payment of \$1,916.33. (*Id.*  
12 ¶ 17.) As of the date of this Order, no class member has objected to or opted out of the  
13 Settlement Agreement. (*Id.* ¶¶ 13–14.) Plaintiff now moves for final approval of the  
14 Settlement Agreement, Plaintiff’s counsel’s fee award and costs, and Plaintiff’s incentive  
15 award. (Dkts. 32, 34.)

### 16 17 **III. DISCUSSION**

#### 18 19 **A. Fairness of the Settlement**

20  
21 The Ninth Circuit has a “strong judicial policy that favors settlements, particularly  
22 where complex class action litigation is concerned.” *Linney v. Cellular Alaska P’ship*,  
23 151 F.3d 1234, 1238 (9th Cir. 1998) (quoting *Class Plaintiffs v. Seattle*, 995 F.2d 1268,  
24 1276 (9th Cir. 1992)). Federal Rule of Civil Procedure 23 “requires the district court to  
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26 <sup>1</sup> The class was defined as: “All line-haul drivers employed by YRC who held California drivers’  
27 licenses and whose home terminals were in California, and who were paid, in whole or in part, on the  
28 basis of a certain amount of cents per mile from May 19, 2012 up until August 7, 2017 (i.e., when  
Defendant began to pay separately for rest periods) at the terminal at which that putative Class Member  
worked.” (Dkt. 31 at 4.)

determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation and quotation marks omitted). To determine whether this standard is met, a district court must consider a number of factors, including “the strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; . . . and the reaction of the class members to the proposed settlement.” *Id.* (citation and quotation marks omitted). Having fully considered the *Staton* factors, the Court finds this Settlement Agreement fundamentally fair, adequate, and reasonable.

*1. Strength of Plaintiff’s Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation*

Plaintiff maintains the merits of her case but acknowledges that her path to recovery was not without significant risk. YRC vigorously opposed class certification and raised several viable federal preemption defenses to Plaintiff’s claims. Recent developments suggest that federal preemption may pose a significant hurdle to Plaintiff’s case. In particular, after the parties reached the Settlement Agreement, the Federal Motor Carrier Safety Administration ruled that the federal Hours of Service Rules preempt California’s meal and rest break laws, and the agency has since suggested this ruling might apply retroactively. Further litigation on these issues would be costly and unpredictable. The obstacles inherent in continued litigation, when coupled with the risks in obtaining class certification, weigh in favor of granting final approval of the Settlement Agreement. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041–42 (N.D. Cal. 2008) (discussing how a class action settlement offered an “immediate and certain award” in light of significant obstacles posed through continued litigation); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at \*3 (N.D. Cal. 2007) (“Additional

consideration of increased expenses of fact and expert discovery and the inherent risks of proceeding to summary judgment, trial and appeal also support the settlement.”).

## 2. Amount Offered in Settlement

The Settlement Agreement affords a substantial recovery for individual class members. The \$700,000 settlement amount, less attorneys’ fees and costs, Plaintiff’s incentive award, and CPT Group’s administration costs, leaves a net settlement fund of \$431,174.70. According to Plaintiff’s damages model, the settlement represents approximately 65% of the estimated damages to the class. (Dkt. 29 at 18.) On average, each class member will receive approximately \$1,916. (Dancy Decl. ¶¶ 17–18.) The average net per week payment is \$20.13. (*Id.*) This number compares favorably with settlements approved in nearly identical cases in the Central District of California involving drivers paid on a piece-rate basis. *See, e.g., Moss v. USF Reddaway, Inc.*, No. 5:15-cv-01541-JAK, Dkt. 124 (C.D. Cal. July 25, 2018) (approving settlement awarding net per week payment of \$25.03 after a contested class certification motion); *Maldonado v. Heavy Weight Transp., Inc.*, No. 2:16-cv-08838-CAS-RAO, Dkt. 40 (C.D. Cal. Dec. 11, 2017) (approving settlement where average net payment per class member was \$1,195). The amount offered in settlement provides an immediate and tangible benefit to the class members and eliminates the risk that they could receive less than that amount, or nothing at all, if the litigation continued.

The \$20,000 allocated to PAGA penalties is also fair and adequate in light of the YRC’s efforts to bring its compensation policy into compliance with the California Labor Code and the lack of evidence that YRC deliberately underpaid its employees. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (finding that a reduction in PAGA penalties is appropriate where there is no evidence of deliberate evasion of a clear legal obligation). In addition, the PAGA payment here, representing 2.85% of the

gross settlement, is proportionally higher than PAGA payments approved in similar contexts. *See USF Reddaway*, No. 5:15-cv-01541-JAK, Dkt. 124 (approving PAGA payment representing 2.5% of gross settlement); *Heavy Weight*, No. 2:16-cv-08838-CAS-RAO, Dkt. 40 (approving PAGA payment representing 1.5% of gross settlement).

### 3. *Extent of Discovery Completed, Stage of Proceedings, and Experience and View of Counsel*

The Settlement Agreement is also reasonable in light of the stage of litigation. Where the “parties have sufficient information to make an informed decision about settlement,” this factor weighs in favor of approving the settlement. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (internal citation and quotation marks omitted). The parties here engaged in substantial discovery and litigation before reaching the Settlement Agreement before the Court.

Throughout this litigation, Plaintiff has been represented by experienced class action litigators. Ackermann & Tilajef, P.C. and HammondLaw, P.C. have decades of experience litigating wage-and-hour class actions, including representing truck drivers in meal and rest break class actions. (Ackerman Decl. I ¶¶ 14–25.) Since this case was filed in 2016, Plaintiff’s counsel has conducted extensive investigation and engaged in significant discovery. (*Id.* ¶ 24.) Plaintiff’s counsel exchanged formal and informal written discovery, took and defended two depositions, obtained seven witness statements from putative class members, and obtained class certification against YRC’s sister company, USF Reddaway, Inc., in a related case. (*Id.*) Plaintiff’s counsel, after discovery, two mediations, and several months of post-mediation settlement discussions, were able to realistically value YRC’s liability and assess the risk of moving forward with class certification, motions for summary judgment, and potentially trial. The parties’ negotiations allowed them to reasonably evaluate the cost, duration, and risk of

1 further litigation. That evaluation was further supported by the recommendation of an  
2 experienced mediator. The Court is satisfied that the parties reached the proposed  
3 Settlement Agreement after acquiring a full and fair understanding of their likelihood of  
4 success.

#### 5 6 4. *Reaction of Class Members* 7

8 Pursuant to the Court's Order granting preliminary approval, CPT Group provided  
9 notice to class members via mail. In January 2019, CPT Group received data files from  
10 defense counsel containing class member names, last known mailing addresses, social  
11 security numbers, dates of employment, number of workweeks, and telephone numbers.  
12 (Dancy Decl. ¶ 5.) CPT Group searched the National Change of Address database to  
13 update the last known addresses and sent notices to class members via first class mail.  
14 (*Id.* ¶¶ 6, 8.) After fifteen notices were returned, CPT Group used additional databases to  
15 identify updated addresses and resent the notices. (*Id.* ¶¶ 9–10.) The notice summarized  
16 the Settlement Agreement's principal terms and advised class members how to opt out or  
17 object. As of the date of this Order, not a single class member has objected to or opted  
18 out of the Settlement Agreement. Because the reaction of the class has been positive, this  
19 factor favors final approval. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221  
20 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of  
21 objections to a proposed class action settlement raises a strong presumption that the terms  
22 of a proposed class action settlement are favorable to the class members."). Accordingly,  
23 the Court finds the Settlement Agreement fair, adequate, and reasonable under the *Staton*  
24 factors.

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1           **B. Attorneys' Fees and Costs & Plaintiff's Incentive Award**

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3           1. *Attorneys' Fees and Costs*

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5           Plaintiff's counsel also seeks final approval of their proposed attorneys' fees and  
6 costs. A district court has the authority and the duty to determine the fairness of  
7 attorneys' fees in a class action settlement. *See Zucker v. Occidental Petroleum Corp.*,  
8 192 F.3d 1323, 1329 (9th Cir. 1999). When a settlement produces a common fund for the  
9 benefit of the entire class, courts have discretion to employ either the lodestar method or  
10 the percentage-of-recovery method to calculate attorneys' fees. *In re Bluetooth Headset*  
11 *Prods. Liab. Litig.*, 654 F.3d 935, 942–43 (9th Cir. 2011). The amount of fees awarded  
12 rests ultimately in the Court's sound discretion. *Evans v. Jeff D.*, 475 U.S. 717, 736 n.26  
13 (1986), *superseded by statute on other grounds*.

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15           The Court applies the percentage-of-recovery method here. Under this method, the  
16 Ninth Circuit has held that 25 percent of the fund is the "benchmark" for a reasonable fee  
17 award, with 20 to 30 percent as the usual range. *Vizcaino v. Microsoft Corp.*, 290 F.3d  
18 1043, 1047 (9th Cir. 2002). Courts must provide adequate explanation in the record of  
19 any "special circumstances" to justify a departure from the 25-percent benchmark.  
20 *Bluetooth*, 654 F.3d at 942–43 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*,  
21 904 F.2d 1301, 1311 (9th Cir. 1990)); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d  
22 268, 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the  
23 'bench mark' percentage for the fee award should be 25 percent. That percentage amount  
24 can then be adjusted upward or downward to account for any unusual circumstances  
25 involved in this case." (internal citation omitted)). In determining whether the percentage  
26 requested is reasonable, courts consider (1) the extent to which class counsel achieved  
27 exceptional results for the class, (2) whether the case was risky for class counsel,  
28 (3) whether counsel's performance generated benefits beyond the class settlement fund,

(4) the market rate for the particular field of law, (5) the burdens class counsel experienced while litigating the case, and (6) 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).

Plaintiff’s counsel seeks \$210,000 in attorneys’ fees and \$20,825.30 in costs. The requested attorneys’ fee award constitutes 30% of the \$700,000 gross settlement. Although this reflects an upward departure from the 25-percent benchmark, the Court finds the circumstances here support approval of the requested fee amount. Plaintiff’s counsel has obtained a very favorable result for class members—an average recovery of \$1,916.33 per class member—despite significant legal hurdles, including the risk that Plaintiff’s state law claims are, or would be, preempted by federal law. At the time the parties negotiated the settlement, there was a pending Department of Transportation funding bill that included a provision to retroactively preempt all state meal and rest break laws as applied to the trucking industry. After the parties reached an agreement, the Federal Motor Carrier Safety Administration determined that the federal Hours of Service rules preempt California meal and rest break law. In addition to the monetary relief, this action also resulted in other benefits for the class, including changes to YRC’s compensation policies. In August 2017, YRC changed its compensation policy to pay class members separately and hourly for their rest breaks and non-productive time. The requested fees are also consistent with the market rate for similar wage-and-hour cases. *Cf. Heavy Weight*, No. 2:16-cv-08838-CAS-RAO, Dkt. 40 (awarding fees of 33% of the common fund). Furthermore, Plaintiff’s counsel litigated this case on a contingency basis and carried a significant financial burden. This case was particularly risky because of the pending legislation seeking retroactive preemption of Plaintiff’s claims.

Plaintiff’s counsel also provides the Court with the materials necessary to perform a “lodestar cross-check.” Courts commonly—even after having decided to utilize the

percentage-of-recovery method—perform a lodestar cross-check to assess the reasonableness of the percentage award. *See Vizcaino*, 290 F.3d at 1050 (“Calculation of the lodestar, which measures the lawyer’s investment of time in the litigation, provides a check on the reasonableness of the percentage award.”); *see also Bluetooth*, 654 F.3d at 943 (encouraging a “comparison between the lodestar amount and a reasonable percentage award”).

Here, Plaintiff’s counsel calculate their lodestar fee to be approximately \$243,579, based on their hours worked and reasonable hourly rates. (Dkt. 32-1 [Declaration of Craig J. Ackerman, hereinafter “Ackerman Decl. II”] ¶ 16; *id.* Ex. A.) The percentage award is therefore \$33,759 less than the lodestar fee and reflects a negative multiplier. This further supports finding that the requested fee award is reasonable.

In addition, Plaintiff’s counsel requests \$20,825.30 in costs. This amount is \$4,174.70 less than the \$25,000 agreed upon in the Settlement Agreement, so the difference will be added to the net settlement fund to increase each class member’s recovery. Plaintiff’s counsel’s expenses are documented in detail and were primarily incurred on filing and service fees, deposition fees, mediation fees, and travel costs associated with attending hearings, depositions, and mediations. (Ackerman Decl. II ¶ 19; *id.* Ex. C; Dkt. 32-5 [Declaration of Julian Hammond] ¶ 9.) Attorneys routinely bill clients for all of these expenses, and it is therefore appropriate for counsel here to recover these expenses from the settlement fund. Accordingly, the Court awards Plaintiff’s counsel \$210,000 in attorneys’ fees and \$20,825.30 in costs.

## 2. Plaintiff’s Incentive Award

Plaintiff also seeks an incentive award of \$10,000 for her time and effort spent representing the class. “Courts routinely approve incentive awards to compensate named

1 plaintiffs for the services they provide and the risks they incurred during the course of the  
2 class action litigation.” *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 499 (E.D.  
3 Cal. 2010). When evaluating the reasonableness of a lead plaintiff award, courts may  
4 consider several factors, including “the actions the plaintiff has taken to protect the  
5 interests of the class, the degree to which the class has benefitted from those actions,” and  
6 the time the plaintiff has expended in pursuing the litigation. *Staton*, 327 F.3d at 977  
7 (citation and quotation marks omitted).

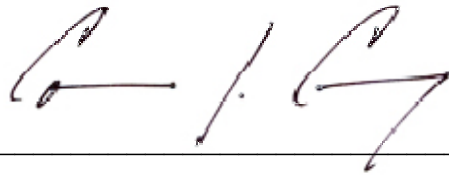
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9 Plaintiff has devoted substantial time and effort to monitoring the litigation and  
10 assisting her counsel. She has spent in excess of 130 hours participating in this matter,  
11 including hundreds of phone calls with Plaintiff’s counsel, gathering and providing  
12 documents and other information, and speaking to other class members to advise them of  
13 this lawsuit and ask for additional information. (Dkt. 32-6 [Declaration of Ramona  
14 Hogue] ¶¶ 5–6, 10.) She had her deposition taken, spent hours traveling to and from her  
15 home and Los Angeles to attend the mediation and deposition, and missed six days of  
16 work to accommodate scheduling in this case. (*Id.* ¶¶ 7–8, 10–11.) She also was present  
17 for the first all-day mediation and was available by phone throughout the entire second  
18 mediation. (*Id.* ¶¶ 7–8.) Her contributions are particularly notable due to the fact that she  
19 was diagnosed with an inoperable brain tumor in 2016, making work and travel difficult.  
20 (*Id.* ¶ 12.) Plaintiff relies on her position with YRC for health benefits, which makes her  
21 participation in this case even riskier for her than it would be otherwise. (*See id.* ¶ 12.)  
22 Under comparable circumstances, courts have approved similar awards to lead plaintiffs.  
23 *See, e.g., USF Reddaway*, No. 5:15-cv-01541-JAK, Dkt. 124 (approving \$14,000  
24 incentive award). The Court finds that the requested \$10,000 award is reasonable in light  
25 of the significant time and effort that Plaintiff has expended.

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1 **IV. CONCLUSION**

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3 For the foregoing reasons, Plaintiff's motions for final approval of the Settlement  
4 Agreement and for attorneys' fees and costs are **GRANTED**. The Court awards  
5 \$210,000 in attorneys' fees and \$20,825.30 in costs to Plaintiff's counsel and \$10,000 as  
6 an incentive award to Plaintiff.  
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10 DATED: June 24, 2019

A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written above a horizontal line.

11  
12 CORMAC J. CARNEY  
13 UNITED STATES DISTRICT JUDGE  
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