UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SHANIA COLE,
Plaintiff,
v.
LANE BRYANT, INC., et al.,
Defendants.

Case No. 22-cv-06714-PCP

ORDER AWARDING ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE INCENTIVE PAYMENT

Re: Dkt. No. 54

The Court has granted final approval of plaintiff Shania Cole's class action settlement in this case alleging state labor law violations. Plaintiff's counsel now moves for attorneys' fees of $383,333, or one-third of the non-reversionary settlement fund; for an award of $25,000 in costs; and for an incentive payment of $10,000 to Cole for her service as a class representative and for her release of claims. Dkt. 54. For the reasons below, the Court grants the motion in part and awards plaintiff's counsel $287,500, or 25% of the settlement fund, in attorneys' fees and $25,000 in costs, and awards Cole a $5,000 incentive payment.

I. LEGAL STANDARD

To protect the interests of absent class members in class action settlements, "[t]he court has a duty … to assure that the amount and mode of payment of attorneys' fees are fair and proper." *In re Consumer Priv. Cases*, 96 Cal. Rptr. 3d 127, 134–35 (Cal. Ct. App. 2009). Fees should be "reasonable" and "compensate counsel for their efforts." *Id.* at 137.

In diversity actions, district courts apply state law methods for calculating awards of attorneys' fees. *Mangold v. Cal. Pub. Utilities Comm'n*, 67 F.3d 1470, 1478–79 (9th Cir. 1995). Under California law, courts have discretion in cases involving non-reversionary common funds to award fees as a percentage of the fund or apply a lodestar approach. *Laffitte v. Robert Half Int'l*

United States District Court
Northern District of California

Inc., 376 P.3d 672, 686–87 (Cal. 2016) (explaining common fund cases establish "a monetary fund for the benefit of the class members"). Where a court chooses to award fees as a percentage of the fund, it may "conduct a lodestar cross-check" or "use other means to evaluate the reasonableness of a requested percentage fee." *Id.* at 688. These other means may include consideration of the risk and potential value of litigation, whether the case was taken on contingency, the novelty of the issues and difficulty of the case, counsel's skill, and the time spent on the case. *See id.* at 687–88; *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002). Although California does not set a benchmark percentage for attorneys' fees, the Ninth Circuit's benchmark of 25% can be a helpful starting point. *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1019 (E.D. Cal. 2019); *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 1000 (N.D. Cal. 2017); *see Laffitte*, 376 P.3d at 686 ("join[ing] the overwhelming majority of federal and state courts" in permitting fees as a percentage of a common fund and citing federal law).

II. DISCUSSION

A. Attorneys' Fees

Plaintiff's counsel contends that one-third of the common fund is a reasonable fee award under both California and Ninth Circuit law. The Court addresses the various reasonableness factors raised by plaintiff's counsel.

Settlement Results. Plaintiff's counsel secured 1,420 class members a $1,150,000 non-reversionary common fund with an average payment of $397.18. Dkt. 54, at 6. This amounts to approximately 16% of the class's maximum recovery. Dkt. 55, at 11–12. Of the gross settlement amount, $150,000 is for plaintiff's PAGA claims, which amounts to 2% of the maximum civil penalty. Dkt. 55, at 15.

These results are favorable to the class, particularly given that wage and hour claims like those at issue here "would not generally produce substantial individual damage awards." *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013); *see Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010). No class members objected to the settlement. Dkt. 55, at 7; *see Nat'l Rural Telecomms. Corp. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Although the Court agrees plaintiff's counsel "obtain[ed] a significant recovery for the class" and "have vindicated the rights of workers and enforced compliance with important workplace regulations," it cannot conclude this is a case involving an especially exceptional recovery. *See Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 456 (E.D. Cal. 2013).

Litigation Risks. This is not a case in which counsel faced a particularly high degree of risk. In *Ridgeway*, for example and by contrast, the court found significant risk where the parties litigated the case for nine years, including to trial, and expended over 11,000 hours and incurred $1.7 million in expenses. 269 F. Supp. 3d at 996–97, 999–1000; *see also Carlin*, 380 F. Supp. 3d at 1020 (noting "multiple risks" where case was initially dismissed, later appealed, and discovery was voluminous and hard-fought). The *Ridgeway* court nonetheless awarded 25% in fees. 269 F. Supp. 3d at 1000. Here, counsel worked only 352 hours on the case and incurred $33,273.37 in costs. Moreover, the case was not meaningfully litigated. Instead, the parties reached their proposed settlement soon after the case was removed to federal court and engaged in no substantive motions practice.

Plaintiff's counsel argues they assumed a high risk because they took the case on a contingent basis and several courts have denied class certification on similar claims. Dkt. 54, at 7–9. While these factors constituted risks, the case was not an "extremely risky" one for counsel. *See Vizcaino*, 290 F.3d at 1048; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 955 (9th Cir. 2015) (concluding the district court "correctly noted that class counsel risked great time and effort and advanced significant costs"). Instead, these are the kind of risks inherent in almost any employment class action.

Skill and Work of Counsel. Although the Court has no reason to doubt counsel "are seasoned attorneys with considerable experience in wage and hour class actions," this case did not require exceptional skill or work. Dkt. 54, at 10. Little active litigation occurred. Counsel filed a complaint and amended complaint, engaged in some discovery, negotiated the settlement, and prepared motions for approval of the settlement. In contrast, cases recognizing the significant skill and work of counsel have generally involved cutting-edge legal theories, claims lacking clear caselaw, substantial factual investigation, technical subject matter, and lengthy, adversarial litigation. *See Vasquez*, 266 F.R.D. at 492; *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-

02617-LHK, 2018 WL 3960068, at *13 (N.D. Cal. Aug. 17, 2018).

Considering these factors, the Court concludes that an attorneys' fee award of 25% of the common fund, or $287,500, would adequately and appropriately compensate plaintiff's counsel for their work securing a beneficial settlement on behalf of the class.

A lodestar cross-check confirms that this 25% award is reasonable. Plaintiff's counsel's proffered lodestar is $269,717.50. A 25% fee award, then, amounts to a positive multiplier of 1.07 on the lodestar. Plaintiff's counsel's declaration also reveals that partners and senior counsel performed a disproportionate amount of work in this matter—particularly in the areas of case management, document review, and analysis of claims. Dkt. 54-1, at 7–8. Had counsel relied on associates to perform a larger portion of this work to save, for example, $20,000 in billing fees, the multiplier would be closer to 1.15. A multiplier of 1.07–1.15 is not "extraordinarily high or low" and supports the reasonableness of a 25% award. *See Laffitte*, 376 P.3d at 688; *Barbosa*, 297 F.R.D. at 454 (finding 1.06 multiplier reasonable on lodestar cross-check); *Carlin*, 380 F. Supp. 3d at 1023 (finding multiplier of 0.96–1.4 reasonable on lodestar cross-check).

B. Costs

"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). Courts regularly award litigation costs and expenses in wage-and-hour class actions where such costs are incurred for the benefit of the class. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 265 (N.D. Cal. 2015).

Plaintiff's counsel incurred $33,273.37 in costs and expenses from copying and printing services; court and service fees; delivery and messenger services; investigation services; mediation fees; and research fees. Dkt. 54-1, at 11. Plaintiff's counsel requests reimbursement of only $25,000 of their costs. Dkt. 54, at 13. These costs are of the type regularly approved for reimbursement. *See id.* at 265–66; *Ontiveros*, 303 F.R.D. at 375; *Carlin*, 380 F. Supp. 3d at 1023–24. The costs requested are also reasonable, particularly given that counsel seeks reimbursement of less than their total out-of-pocket expenses. The request for $25,000 in costs is granted.

C. Incentive Payment

Cole moves for a $10,000 incentive payment for her service as a class representative. Courts routinely grant discretionary inventive awards "to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *Rodriguez v. W. Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Courts evaluate incentive awards using "relevant factors including the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, the amount of time and effort the plaintiff expended in pursuing the litigation and reasonable fears of workplace retaliation." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (cleaned up). A $5,000 incentive payment is presumptively reasonable. *Bellinghausen*, 306 F.R.D. at 266.

Cole spent between 25 and 35 hours conferring with counsel and reviewing the complaint and proposed settlement in this case. Dkt. 54-2. Cole's service is commendable. Her time commitment, however, does not rise above the amount required in the average case, and may indeed be below what class representatives undertake in actively litigated cases. *See Monterrubio*, 291 F.R.D. at 463. Moreover, a $10,000 incentive payment would amount to 3.5% of the settlement fund, a higher percentage than approved by many other courts. *See In re Anthem*, 2018 WL 3960068, at *31 (collecting cases); *Bellinghausen*, 306 F.R.D. at 267. The Court instead finds a $5,000 incentive payment, amounting to 1.8% of the common fund, is reasonable.

III. CONCLUSION

The Court grants in part plaintiff's motion for attorneys' fees, costs, and a class representative incentive payment. The Court awards plaintiff's counsel $287,500, or 25% of the settlement fund, in attorneys' fees; plaintiff's counsel $25,000 in costs; and Cole a $5,000 incentive payment. The claims administrator shall retain 10% of the attorneys' fees awarded herein until the parties confirm that the settlement distribution process is complete. They shall file a final accounting or status report no later than six months from the date of this order.

IT IS SO ORDERED.

Dated: December 29, 2025

P. Casey Pitts
United States District Judge

United States District Court
Northern District of California