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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

QIUZI HU, et al.,
Plaintiffs,
v.
JOSE M. PLEHN-DUJOWICH, et al.,
Defendants.

Case No. [18-cv-01791-AGT](#)

**ORDER APPROVING SETTLEMENT
AND AWARD OF ATTORNEYS' FEES**

Re: Dkt. Nos. 113, 116

Last week the Court held a hearing to consider plaintiffs' motions for final approval of the parties' class action settlement agreement and for awards of attorneys' fees, costs, and incentive payments. No class members attended the hearing and no objections to the motions were made. Having considered the submissions and oral arguments, the Court GRANTS both motions.

FAIRNESS REVIEW

Before approving a class action settlement, the Court must determine that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). For the following reasons, the Court concludes that the parties' settlement satisfies this standard.

1. The settlement adequately compensates class members, returning to them all of the course fees that they paid to participate in the GFDP. Although plaintiffs also sought wages for the work they performed as part of the GFDP, the lack of a recovery for that work does not render the settlement unfair. Plaintiffs were not employees of the GFDP, and they may not have prevailed at trial on their theory of de facto employment. Rather than incur additional costs, with the hopes of prevailing on a novel theory at trial, it was reasonable for plaintiffs to choose a smaller but more certain recovery today. *See* Fed. R. Civ. P. 23(e)(2)(C)(i) (identifying "the costs, risks, and delay of trial and appeal" as factors to consider in determining whether the relief provided by a class action settlement is adequate).

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1 2. The settlement was reached after class certification, through settlement conferences with
2 an experienced magistrate judge, and produced valuable monetary relief for the class. For these
3 reasons, the Court is satisfied that the settlement was negotiated at arm’s length. *See* Fed. R. Civ.
4 P. 23(e)(2)(B). These factors also militate against the concerns of collusion that would normally
5 arise from the settlement’s “clear sailing” clause¹ and from the settlement’s reversion of unpaid
6 attorneys’ fees to the defendants. *See In re Ferrero Litig.*, 583 F. App’x 665, 668 (9th Cir. 2014)
7 (explaining that because a “settlement was reached after class certification, through settlement
8 conferences with judicial officers, and produced both monetary and injunctive relief for the class,”
9 the “concerns regarding collusion” expressed in *In re Bluetooth Headset Products Liability*
10 *Litigation*, 654 F.3d 935, 946–47 (9th Cir. 2011), were mitigated).

11 3. The class representatives and class counsel adequately represented the class. *See* Fed.
12 R. Civ. P. 23(e)(2)(A). The class representatives participated in class counsel’s factual
13 investigation, offered testimony in support of class certification, and reviewed filings in the case.
14 *See* ECF No. 113-1 at 9; ECF Nos. 113-5, -6, -7. Class counsel, in turn, investigated and
15 researched the claims, conducted discovery, briefed several motions, participated in multiple
16 mediations, and prepared and sent notice of the settlement to potential class members. *See* ECF
17 No. 113-1 at 2–5. The work performed in the case and the absence of any glaring conflicts of
18 interest give the Court confidence that the class representatives and class counsel properly
19 performed their roles.

20 4. Of the approximately 240 class members, 132 submitted claims. *See* ECF No. 116-1,
21 Michael Decl. ¶ 12. No class members objected to or opted out of the settlement. *See id.* ¶ 16.
22 The absence of objectors and opt-outs is further evidence that the settlement is fair. *See Cruz v.*
23 *Sky Chefs, Inc.*, No. C-12-02705 DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (“A
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25 ¹ Contrary to plaintiffs’ contention, *see* Fees Mot., ECF No. 113 at 17, the settlement does include
26 a “clear sailing” arrangement. *See Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir.
27 2019) (identifying a “clear sailing” arrangement as one “where [the] defendant will not object to a
28 certain fee request by class counsel”) (citation omitted); ECF No. 99-1, Settlement § 11.1 (stating
that defendants will “take no position regarding the attorney fee award” if class counsel requests a
fee award of \$300,000 or less).

1 court may appropriately infer that a class action settlement is fair, adequate, and reasonable when
 2 few class members object to it.”). The class response rate (55 percent) also compares favorably
 3 with the response rates in similar class actions. *See, e.g., id.* (approving employment class action
 4 settlement with 30 percent response rate); *Jasper v. C.R. England, Inc.*, No. CV 08-5266-GW,
 5 2014 WL 12577426, at *6 (C.D. Cal. Nov. 3, 2014) (approving employment class action
 6 settlement with 40 percent response rate).

7 5. The settlement treats class members equitably relative to each other. *See* Fed. R. Civ. P.
 8 23(e)(2)(D). Class members’ recoveries will be tied to what they paid in course fees, *see*
 9 Settlement § 8.3, a reasonable measure of their damages. Priority will be given to those who
 10 submitted documentation of the fees they paid, *see id.*, a sensible term that helps increase the
 11 likelihood that class members recover what they paid.

12 6. The claims-processing and distribution plans are reasonable. *See* Fed. R. Civ. P.
 13 23(e)(2)(C)(ii). The settlement administrator has already reviewed class members’ claim forms to
 14 ensure that they are complete. *See* ECF No. 116-1, Michael Decl. ¶¶ 12–16. After defendants
 15 deposit sufficient funds into the settlement account, the administrator will make payments to class
 16 members in the manner they requested (e.g., by mail, by direct deposit, by electronic check). *See*
 17 Settlement § 7.7. Funds will be distributed to class members on a rolling basis, over five years.
 18 *See* Settlement § 3.2. Although this is a lengthy payout period, it is justified by the defendants’
 19 limited assets. *See* Mot, ECF No. 116 at 15; *see also* ECF No. 87-1, Michael Decl. ¶¶ 15–17.²

20 For the above reasons, the Court concludes that the settlement is fair, reasonable, and
 21 adequate.

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 25 ² Given the lengthy payout period, the Court instructs class counsel to file an annual statement of
 26 accounting, due on the anniversary of this order until defendants have made all payments required
 27 by the settlement and until all of those payments have been disbursed to class members. The
 28 accounting should identify (i) the total amount that defendants have paid into the settlement fund,
 (ii) whether defendants have missed any payment deadlines, (iii) the number of class members
 whose claims have been paid, (iv) the average and median recovery per claimant, (v) the largest
 and smallest amounts paid to class members, (vi) the number and value of checks not cashed, and
 (vii) the administrative costs that have been deducted from the settlement fund.

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INCENTIVE PAYMENTS / ATTORNEYS’ FEES

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2 1. The four class representatives each seek an incentive payment, ranging from \$2,000 to
3 \$7,000, for a total of \$20,000. *See* Settlement § 3.5.1. Having reviewed the class representatives’
4 and class counsel’s declarations, *see* ECF Nos. 113-1, -5, -6, -7, the Court is satisfied that the
5 incentive payments will reasonably compensate the class representatives “for work done on behalf
6 of the class.” *Roes*, 944 F.3d at 1057. The payments are thus justified, *see id.*, and the Court
7 approves them.

8 2. Class counsel seeks to recover from the defendants \$300,000 in attorneys’ fees and
9 costs. For several reasons, the Court concludes that the amount of this award is reasonable.

10 a. First, a recovery of \$300,000 would represent only 55 percent of the total fees and
11 costs that class counsel incurred in litigating this action. *See* ECF No. 113-2 (billing reports), ECF
12 No. 113-3 (expense reports). That large discount is more than enough to cover any difference
13 between the documented fees and costs, and the fees and costs that “could reasonably have been
14 billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).

15 b. Second, the parties negotiated the \$300,000 amount. *See* ECF No. 113-1, Dhillon
16 Decl. ¶ 16. Such negotiations are permitted in cases like this one, where “fees can be justified as
17 statutory fees payable by the defendant.” *Staton v. Boeing Co.*, 327 F.3d 938, 945 (9th Cir.
18 2003).³ And since the fees were negotiated and reflect a compromise, there is less cause for
19 concern about an inflated award. *See id.* at 966 (“[S]ince the proper amount of fees is often open
20 to dispute and the parties are compromising precisely to avoid litigation, the court need not inquire
21 into the reasonableness of the fees even at the high end with precisely the same level of scrutiny as
22 when the fee amount is litigated.”).

23 c. Third, although a \$300,000 fee award would represent 43 percent of the total
24 settlement recovery, which would be above the 25 percent benchmark that is often used to
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26 _____
27 ³ Several of the claims in the complaint permit the prevailing party to recover reasonable
28 attorneys’ fees. *See, e.g.*, 29 U.S.C. § 216(b) (FLSA fee-shifting provision); Cal. Civ. Code
§ 1780(e) (CLRA fee-shifting provision); Cal. Lab. Code § 226(h) (labor code fee-shifting
provision).

1 calculate attorneys' fees when a settlement results in a common fund, *see Bluetooth*, 654 F.3d at
2 942, a further discount of the fee award, on top of the discount that was reached through the
3 parties' negotiations, is unnecessary. The GFDP course fees, which ranged from \$2,413 to
4 \$2,913, were relatively low for a collegiate course. Which in turn means that the relief that
5 counsel obtained for the class—a refund of those fees—has a modest dollar value. But that
6 doesn't mean plaintiffs' claims were not worth bringing, as the allegations support a fairly blatant
7 fraud that affected a relatively vulnerable student population. *See* ECF No. 40, FAC ¶ 37 (alleging
8 that the defendants targeted "international students, many of whom are not native English
9 speakers"). If the common-fund benchmark were used, counsel would be disincentivized from
10 pursuing claims like these, which have a modest dollar value but which provide a social benefit.
11 In these circumstances, where the 25 percent benchmark would not lead to a reasonable result,
12 courts have discretion not to use it. *See Bluetooth*, 654 F.3d at 942–43. The Court exercises that
13 discretion here.

14 d. Lastly, the Court notes that no class members have objected to class counsel's
15 request for \$300,000 in fees. The lack of objections further supports that the fee request is
16 reasonable. *See, e.g., In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab.*
17 *Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 2178787, at *3 (N.D. Cal. May 17, 2017)
18 (concluding that a low objection rate to counsel's fee request reflected a "strong, positive response
19 from the class" and supported approval of the request).

20 Class counsel's request for \$300,000 in attorneys' fees and costs is reasonable, and the
21 Court approves the award.

22 **IT IS SO ORDERED.**

23 Dated: March 2, 2020

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27 ALEX G. TSE
28 United States Magistrate Judge