



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Link 954

CIVIL MINUTES - GENERAL

Case No.	CV 15-4113 PSG (JEMx)	Date	September 20, 2022
Title	Andrews, et al. v. Plains All American Pipeline L.P., et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
	Wendy Hernandez		Not Reported
	Deputy Clerk		Court Reporter
Attorneys Present for Plaintiff(s):	Attorneys Present for Defendant(s):		
Not Present	Not Present		

**Proceedings (In Chambers): Order GRANTING Plaintiffs’ motion for attorneys’ fees, expenses, and class representative service awards.**

Before the Court is Plaintiffs’ unopposed motion for attorneys’ fees, expenses, and class representative service awards. *See generally* Dkt. # 954 (“*Mot.*”). The Court conducted a fairness hearing on September 20, 2022. Having considered the moving papers and the information provided at the hearing, the Court **GRANTS** Plaintiffs’ motion.

I. Background

This case arises from an oil spill that occurred at Refugio State Beach in Santa Barbara County on May 19, 2015. The facts have been repeatedly recounted in the Court’s prior orders, and the Court will address here only those facts relevant to Plaintiffs’ request for fees and expenses.

The parties have engaged in almost seven years of hard-fought litigation in order to arrive at the \$230 million Settlement before the Court for final approval. *See* Dkts. # 952, 953; *see also Settlement Agreement*, Dkt. # 944-1, Ex. 1 (setting forth the terms of the Settlement). During this time, the parties conducted extensive discovery, which included among other things exchanging more than 360,000 documents, disclosing 17 experts and producing 52 expert reports, and taking over 100 depositions. *See Declaration of Robert J. Nelson*, Dkt. # 955 (“*Nelson Decl.*”), ¶¶ 11–18. Plaintiffs also successfully certified two Classes—the Fisher Class and Property Class, *see* Dkts. # 454, 577—and opposed Defendants’ repeated efforts to decertify the Classes, *see, e.g.*, Dkts. # 624, 714, 720, 874.<sup>1</sup> The Parties filed summary judgment motions,

<sup>1</sup> Moreover, Defendants petitioned the Ninth Circuit Court of Appeals to review the certifications of the Fisher Class and Property Class, and the Ninth Circuit denied both petitions.

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*see, e.g.*, Dkts. # 554, 646, and ultimately prepared for trial in 2020, *see, e.g.*, Dkts. # 732 740, which was then postponed due to the COVID-19 pandemic, *see* Dkt. # 722. Finally, the Settlement was reached only after the parties participated in three formal full-day mediations over the course of three years. *See Nelson Decl.* ¶ 5.

Plaintiffs now bring this motion seeking the Court’s approval of the following awards: (1) attorneys’ fees of \$73.6 million, or 32% of the total Settlement; (2) reimbursement of \$6,085,336 in litigation expenses; and (3) service awards of \$15,000 to each of the 14 Class Representatives, for a total of \$210,000. *See generally Mot.*

II. Attorneys’ Fees

A. Legal Standard

Awards of attorneys’ fees in class action cases are governed by Federal Rule of Civil Procedure 23(h), which provides that, after a class has been certified, the court may award reasonable attorneys’ fees and nontaxable costs. *See* Fed. R. Civ. P. 23(h). The court, however, “must carefully assess” the reasonableness of the fee award. *See Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003).

Where litigation leads to the creation of a common fund, courts can determine the reasonableness of a request for attorneys’ fees using either the percentage-of-recovery method or the lodestar method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944 45 (9th Cir. 2011) (finding that courts may use either method to gauge the reasonableness of a fee request but encouraging courts to employ a second method as a cross-check after choosing a primary method).

Under the percentage-of-recovery method, courts typically use 25% of the fund as a benchmark for a reasonable fee award. *See id.* at 942. However, the percentage can vary, and courts have awarded more or less than 25% of the fund in attorneys’ fees as they deemed appropriate. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (noting that courts generally award between 20 and 30% of the common fund in attorneys’ fees). When assessing the reasonableness of a fee award, courts consider “(1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the

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*See Plains All American Pipeline, et al.*, No. 19-80167, Dtk. # 3 (9th Cir. July 27, 2020); *Plains All American Pipeline, et al.*, No. 18-80054 (9th Cir. June 27, 2018).

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fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing *Vizcaino*, 290 F.3d at 1048 50).

B. Discussion

After seven years of litigation and roughly 85,245 hours of work, Class Counsel now seek an award of \$73.6 million, or 32% of the \$230 million gross settlement amount a modest departure from the federal benchmark given the circumstances of this case. *See Mot.* 5:5 17:12; *Nelson Decl.* ¶ 32. But where a settlement results in a common fund, “fee applications must be closely scrutinized.” *Staton*, 327 F.3d at 969 (quoting *Vizcaino*, 290 F.3d at 1052). As such, the Court applies the percentage-of-recovery method and analyzes Plaintiffs’ fee request under the *Vizcaino* factors.

Due to the exceptional circumstances of this case and the Court’s extensive involvement in supervising the last seven years of litigation, the Court diverts from its usual practice and finds it unnecessary to cross-check the reasonableness of the requested award using the lodestar method. *Cf. Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1007 (9th Cir. 2002) (holding that the district court did not err by using only the lodestar method to calculate fees given that the parties settled early in the litigation).

i. *Results Achieved*

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1046. “[T]he law appropriately provides for some upward adjustment [from the federal benchmark] where the results achieved are significantly better than the norm.” *Rodman v. Safeway, Inc.*, No. CV 11-3003 JST, 2018 WL 4030558, at \*3 n.3 (N.D. Cal. Aug. 22, 2018).

Here, Class Counsel secured significant percentages of the Classes’ maximum potential compensatory damages recovery. Specifically, even with fees deducted, the \$46 million Property Class Settlement represents roughly 35% of the maximum class wide compensatory damages, and the \$184 million Fisher Class Settlement represents approximately 65% of recovery through 2017, or 25% through 2020. *Mot.* 6:3 5 n.6; *cf. In re Heritage Bond Litig.*, No. 02-ML-1475-DT (RCX), 2005 WL 1594389, at \*8 (C.D. Cal. June 10, 2005) (awarding 33.33% in fees to counsel where the class recovered 23% of the total net loss after fees were deducted); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1021, 1023 (E.D. Cal. 2019)

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(awarding 33.3% of a \$40 million common fund that represented 48% of damages). Not only does the Settlement provide meaningful and immediate monetary relief to members of both Classes, but the recovery was also obtained in the face of complex and hotly disputed issues that were central to Plaintiffs' case including Defendants' negligence, the proper measure of damages, and the propriety of class certification and with little precedent to rely upon. *See Mot. 7:1 27*; *see also Vizcaino*, 290 F.3d at 1048 (affirming the district court's finding that counsel "achieved exceptional results for the class" in the face of difficult facts, "in the absence of supporting precedents," and despite "[Defendant's] vigorous opposition throughout the litigation"); *Lopez v. Youngblood*, CV-F-07-0474 DLB, 2011 WL 10483569, at \*6 (E.D. Cal. Sept. 2, 2011) (exceeding the federal benchmark where "[t]he authority upon which Plaintiffs were able to rely was relatively scant").

Accordingly, the Court is persuaded that this factor weighs in favor of an upward departure from the federal benchmark.

*ii. Risk of Litigation*

In assessing the fairness and reasonableness of an award of attorneys' fees, the risk that further litigation might result in no recovery is a "significant factor." *In re Omnivision Techs.*, 559 F. Supp. 2d at 1046-47. As mentioned above, Plaintiffs' case hinged on the resolution of several complex and disputed issues, and a loss at trial or on appeal on any of these issues could have precluded Class recovery in whole or part. *See Mot. 7:2 16*. This risk is only magnified by the novelty and length of this litigation. Thus, this factor supports the requested fee award of 32% of the common fund.

*iii. The Skill Required and the Quality of Work*

The Court also considers the skill required to prosecute and manage this litigation, as well as Class Counsel's overall performance. *See In re Omnivision Techs.*, 559 F. Supp. 2d at 1047.

Having witnessed the complexities of the legal and factual issues at play in this case, the Court finds Class Counsel's litigation efforts notable. For example, Class Counsel successfully certified the Fisher and Property Classes and repeatedly opposed Defendants' decertification motions despite the lack of precedent to rely upon. *Nelson Decl.* ¶ 9 ("To Class Counsel's knowledge, at the time this action was filed, there had not previously been a property tort litigation class certified under California law."). This in conjunction with the extensive and technical fact and expert discovery, the multiple motions for summary judgment, trial preparations, and three formal daylong mediations underscores the skill and effort needed to

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achieve the impressive \$230 million settlement result. *See Mot.* 8:2 9:24. And especially when considering that Defendants were represented by a prominent litigation firm, Class Counsel’s ability to get the case this far along evinces their high quality of work. *See In re Am. Apparel, Inc. S’holder Litig.*, No. CV 10-6352 MMM (JCGx), 2014 WL 10212865, at \*22 (C.D. Cal. July 28, 2014) (“In addition to the difficulty of the legal and factual issues raised, the court should also consider the quality of opposing counsel as a measure of the skill required to litigate the case successfully.”).

As such, this factor too weighs in favor of awarding Class Counsel its requested fees.

*iv. The Contingent Nature of the Fee and Financial Burden Carried by the Plaintiffs*

An upward departure from the federal benchmark may be warranted when Class Counsel faced the risk of walking away with nothing after investing substantial time and resources in the matter. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 (“The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee.”). Here, Class Counsel took this matter on a wholly contingent basis with no guarantee of recovery and litigated it to the point of trial before the parties finally arrived at this settlement. *See Nelson Decl.* ¶ 24. The Court agrees that the substantial risks borne by Class Counsel in pursuing this class action for seven years with no guarantee of recovering fees or litigation expenses also militates in favor of finding the requested fee award reasonable.

*v. Awards Made in Similar Cases*

The requested attorneys’ fees are comparable to awards authorized in similar cases. *See, e.g., In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal. 1989) (finding “nearly all common fund awards range around 30%”); *Cabiness v. Educ. Fin. Sols., LLC*, No. 16-cv-01109-JST, 2019 WL 1369929, at \*8 (N.D. Cal. Mar. 26, 2019) (awarding 30% of the common fund in TCPA case where average per-class-member recovery was \$33.36); *Williams v. MGM-Pathe Comm’n Co.*, 129 F.3d 1026, 1026 (9th Cir. 1997) (awarding 33% of the \$4.5 million settlement fund); *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at \*29 (N.D. Cal. Apr. 1, 2011) (finding a 42% fee award appropriate). Moreover, the Court compares the requested award to those from cases that are similar in size, complexity, and duration and concludes that an award of 32% is within the range of reasonableness permitted in this Circuit. *See, e.g., In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at \*3, \*7 (D. Ariz. Apr. 20, 2012) (33.33% of a \$145 million settlement awarded following seven years of litigation

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“pursued . . . despite great risk”); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-MD-1827 SI, 2011 WL 7575003, at \*1 (N.D. Cal. Dec. 27, 2011) (30% of a \$405 million settlement awarded after six years of litigation involving complex factual and legal issues); *see also In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, No. 4:14-md-2541-CW, 2017 WL 6040065, at \*5 n.30 (N.D. Cal. Dec. 6, 2017) (collecting “mega-fund” cases from around the country, including those awarding fees of one-third the settlement fund).

Accordingly, similar cases establish that an upward departure from the federal benchmark is appropriate here.

C. Conclusion

Based on the unique circumstances of this case and because all of the *Vizcaino* factors considered under the percentage-of-recovery method heavily support Plaintiffs’ requested fee, the Court forgoes cross-checking the reasonableness of the fee against the lodestar method. Ultimately, the Court is convinced that an award of 32% of the common fund is warranted and reasonable under the circumstances. As such, the Court **GRANTS** Plaintiffs’ motion for \$73.6 million in attorneys’ fees.

III. Litigation Expenses

In class action settlements, “[a]ttorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.” *See In re Omnivision Techs.*, 559 F. Supp. 2d at 1048. Here, Class Counsel requests reimbursement of \$6,085,336 in costs and expenses. *See Mot* 17:13 18:8. This includes expenses that are typically charged to fee-paying clients, including filing fees, expert witness fees, mediation fees, deposition expenses, legal research fees, and copying and postage charges. *See Nelson Decl.* ¶ 32; *Declaration of Juli E. Farris*, Dkt. # 956, ¶¶ 18 20; *see also In re Lidoderm Antitrust Litig.*, No. 14-md-02521-WHO, 2018 WL 4620695, at \*4 (N.D. Cal. Sept. 20, 2018) (awarding almost \$4 million in expenses for filing fees, computerized research, copies, postage and messenger services, experts, and case-related travel); *In re NCAA Antitrust Litig.*, 2017 WL 6040065, at \*5, \*11 (finding expenses of over \$3 million were reasonable given that the matter was litigated for over three years). Given the duration and scope of this litigation, and after reviewing accompanying declarations, the Court is satisfied that the costs are reasonable. Therefore, the Court **GRANTS** Plaintiffs’ request for costs in the amount of \$6,085,336.

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IV. Class Representatives' Service Awards

“Incentive awards are fairly typical in class action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). When assessing requests for service awards, courts consider five principal factors:

(1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

*Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

After reviewing the submitted declarations provided by each of the Class Representatives, *see Nelson Decl.*, Exs. 3-16, the Court is satisfied that the requested service awards of \$15,000 each are appropriate. Throughout the case’s trajectory, each Class Representative, among other things, searched for and provided facts used to compile Plaintiffs’ operative complaint, helped Class Counsel analyze claims, sat for deposition, and reviewed and approved the settlement. *See id.* They each dedicated time and effort to the benefit of the litigation without any assurance of receiving compensation in the immediate or near future, if ever. *See, e.g., Nelson Decl.*, Ex. 3 (Declaration of Sarah Rathborne) ¶¶ 10, 12 (“I estimate that I devoted approximately 130 hours to this case.”); *id.*, Ex. 5 (Declaration of Keith Andrews) ¶¶ 10, 12 (“I estimate that I devoted approximately 200 hours to this case.”); *id.*, Ex. 8 (Declaration of David Tibbles) ¶¶ 10, 12 (“I estimate that I have devoted more than 150 hours to this case.”).

Moreover, the Court recognizes that service awards of this size or even larger are common in class action cases. *See Mot.* 18:22-23 (citing cases approving awards of \$20,000 to \$25,000); *see also In re NCAA Antitrust Litig.*, 2017 WL 6040065, at \*11 & n.69 (finding the requested service awards of \$20,000 for each class representative consistent with service awards in other cases). Finally, the combined service awards represent less than 0.1% of the gross settlement, which is reasonable given the hours expended by the Class Representatives in pursuing class wide relief. *See Edwards v. Chartwell Servs., Inc.*, No. CV 16-9187 PSG (KSx), 2018 WL 10455206, at \*1-2, \*8 (C.D. Cal. Aug. 27, 2018) (approving a \$10,000 enhancement award, which represented 1.25% of the gross settlement fund, when plaintiff spent approximately 55 hours assisting with the case and risked future job prospects); *Palmer v. Pier 1*

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*Imports*, No. 8:16-cv-01120 JLS (DFMx), 2018 WL 8367495, at \*6 (C.D. Cal. July 23, 2018) (approving service award representing 3.5% of gross settlement fund when plaintiff spent 20 hours helping with the case and faced employment-related risks).

Accordingly, the Court **GRANTS** Plaintiffs' request for service awards in the amount of \$15,000 per Class Representative, for a total of \$210,000.

V. Conclusion

For the foregoing reasons, Plaintiffs' motion for approval of attorneys' fees, expenses, and service awards is **GRANTED**. Accordingly, it is **HEREBY ORDERED AS FOLLOWS**:

- Class Counsel is awarded 32% of the total settlement amount, or \$73.6 million, in attorneys' fees and \$6,085,336 in costs; and
- Each of the 14 Class Representatives is awarded \$15,000 in service awards.

This order in conjunction with the orders granting final approval of class settlement and the plans for distribution close the case.

**IT IS SO ORDERED.**