UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:18-CV-08220-RGK (E)	Date	October 8, 2021
Title	***VICTOR CORTEZ ARRELLANO, et al. v. XPO PORT SERVICE INC., et al.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams (not present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Plaintiffs' Motion for Preliminary Approval of Class Action Settlement [DE 254]**

I. INTRODUCTION

On December 10, 2019, Reynaldo Gomez Acosta, Servando Avila Luciano, and Feliz Nunez Duarte, and Plaintiffs Edgardo Villatoro, Manuel De Jesus Martinez, and Gerard Daniels in consolidated case 2:19-cv-09199 (collectively, "Plaintiffs") filed a fourth amended class action complaint ("FAC") on behalf of themselves and similarly situated individuals against XPO Port Services INC., XPO Logistics Port Services, LLC, XPO Logistics Cartage, LLC, XPO Logistics, Inc. and DOES 1 to 50 (collectively dba as XPO LOGISTICS) ("XPO," or "Defendants").[1]

Plaintiffs' FAC alleges various violations of the California Labor Code, including: (1) Labor Code § 226.8(a)(1) (Misclassification of Employees); (2) Labor Code §§ 221, 224, 226, 2802 (Unlawful Deductions and Reimbursable Expenses); (3) Labor Code §§ 1194, 1194.2 and 1197 (Unpaid Minimum Wages); (4) Labor Code § 203 (Waiting Time Penalties); (5) Labor Code § 204 (Failure to Pay All Wages Owed Every Pay Period); (6) Labor Code §§ 226.7 and 512 (Rest Periods); (8) Labor Code §§ 226 and 226.3 (Itemized Wage Statements); (9) Business and Professions Code § 17200 (Unfair Competition); (10) Labor Code § 2698 (Private Attorney General Act) ("PAGA").

On September 16, 2020, the Court certified:

[1] The Court has consolidated the following subsequently filed case with this one: Case No. 2:18-CV-09199-RGK (E), *Edgardo Villatoro et al. v. XPO Logistics Port Services, LLC et al.*

> a class of approximately 215 current and former drivers (79 current) of Defendant XPO who work or worked out of XPO's California yard located at 18726 South Laurel Road, Rancho Dominguez, California during the relevant period from March 28, 2013 to present, defined as the class of individuals who: (1) signed an independent contractor agreement with XPO in California at any time from March 28, 2013 through the date of notice to the class; (2) actually drove for XPO; and (3) were classified by XPO as an independent contractor instead of an employee. The [] class excludes individuals who performed services as "Second Seat Drivers" and any limited liability corporations or other corporate entities that signed the [an independent contractor agreement, *i.e.*,] ICOC.[2]

(Order Re: Pls.' Mot. to Cert. Class at 3, ECF No. 101).

Presently before the Court is Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Motion") (ECF No. 254). For the following reasons, the Court **GRANTS** Plaintiffs' Motion.

II. BACKGROUND

A full recitation of the facts is set forth in the Court's Order of September 16, 2020. (ECF No. 101). Any additional facts necessary to the resolution of this motion are set forth in the discussion section below.

III. JUDICIAL STANDARD

Federal Rules of Civil Procedure ("Rule") 23 requires that class action settlements satisfy two primary prerequisites before a court may grant preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified; and (2) that the proposed settlement is "fair, adequate, and reasonable." Fed. R. Civ. P. 23(a), (e)(2); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020, 1026 (9th Cir. 1988). Here, the Court has already certified a class, and therefore need only consider the second prerequisite.

At the preliminary approval stage, the Court must evaluate whether the proposed settlement's terms "are within a range of possible judicial approval." *See Spann v. J.C. Penney Corporation*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (internal citations omitted). Thus, before preliminary approval, the

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[2] The Court declined to certify the class as to Plaintiffs' claim for reimbursement under Cal. Labor Code § 2802. (Order Re: Pls.' Mot. to Cert. Class at 13–14).

Court must first determine whether the proposed settlement appears "fair, adequate, and reasonable." Fed. R. Civ. P. 23(e)(2); *Hanlon*, 150 F.3d at 1020. Towards this end, the Ninth Circuit has provided a non-exhaustive list of fairness factors for district courts to analyze, but the weight given to each factor varies based on the unique circumstances in each case. *Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Courts evaluate the settlement as a whole, rather than its individual parts, to determine its overall fairness. *Id.* Second, the court must consider the adequacy of the proposed settlement notice. *Id.* at 1025; Fed. R. Civ. P. 23(e).

IV. DISCUSSION

The parties to this suit have reached a settlement agreement, (Declaration of Alvin M. Gomez, Ex. A, ECF No. 254-2 at 12–32[3]) ("the Settlement Agreement"), that Plaintiffs now submit to the Court for approval. Under the Settlement Agreement, all Class members would release XPO of liability for all

> claims, actions, causes of action, administrative claims, demands, debts, damages, penalties, costs, interest, attorneys' fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, which: (i) are owned or held by Named Plaintiffs and Class Members and/or by their Related Entities (if any), or any of them, as against Releasees, or any of them; (ii) arise under any statutory or common law claim which was asserted in either the Operative Complaint, or in any of the prior complaints in the Lawsuit or, whether or not asserted, could have been brought arising out of or related to the allegations of misclassification of Named Plaintiffs and Class Members as independent contractors set forth in the Operative Complaint, and (iii) pertain to any time in the Release Period.[4]

(Settlement Agreement at 15). In consideration for this broad release, XPO agrees to pay $9.5 million, to be allocated as follows: up to $6,123,650.00 to the Class Members, which provides for a payout of approximately $542 per workweek per Class Member, or more than $27,000 per year, (*see* Settlement Agreement at 7–8); $20,000 for Plaintiffs' PAGA claims, of which 75% ($15,000) shall be paid to the state of California, (Motion at 6); a service award of $10,000 to each of the six named-Plaintiffs, (*id.*);

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[3] Citation to the Settlement Agreement refers to the ECF pagination at the top of the page.

[4] The Release Period is defined by the agreement as "the time period from March 28, 2013, through the date of the Court's Final Approval Order or December 31, 2021, whichever is earlier." (Settlement Agreement at 17).

$9,500 for the cost of settlement administration, (*id.* at 8); and $135,000 in costs and and up to 33.33%—or $3,166,350.00—of the settlement amount in fees for Plaintiffs' counsel, (*id.* at 6).

Defendant does not oppose Plaintiffs' Motion. Thus, having already certified Plaintiffs' class under Rule 23(a) and 23(b), the Court must now determine whether the settlement meets the requirements of Rule 23(e).

A. The Settlement Agreement

For preliminary approval of a class settlement, the Court determines whether the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To determine whether a settlement agreement meets the above standards, a district court may consider some, or all, of the following factors:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); s*ee Officers for Justice,* 688 F.2d at 625 (noting that the list of factors is "by no means an exhaustive list of relevant considerations").

The Court first addresses any potential conflicts of interest or evidence of collusion, then turns to the settlement agreement and notice.

1. Collusion

The Court addresses whether there is any evidence of collusion or conflicts of interest. Plaintiffs assert the settlement is the product of arms-length, non-collusive negotiations using the assistance of a mediator, and warrants a presumption of fairness.

Relevant factors in evaluating a settlement for evidence of collusion include: (1) whether counsel receives "a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded," (2) if there is a "clear sailing" agreement "providing for the payment of attorneys' fees separate and apart from class funds, which carries 'the potential of

enabling a defendant to pay class counsel excessive fees and costs in exchange for counsel accepting an unfair settlement on behalf of the class,'" and (3) if "the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.* at 947 (internal citations omitted).

None of the above factors are seriously implicated in the present case. Aside from awarding one-third of the settlement amount in attorneys' fees, which the court addresses later, there is no apparent evidence that is in any way indicative of collusion. The settlement resulted from two separate private mediations before the Honorable Jay Gandhi (Ret.). Moreover, under the agreement, the class receives a significant sum, there is no "clear sailing" arrangement, and any amounts not awarded to the class will revert to a *cy pres* beneficiary, Casa Cornelia Law Center, rather than XPO. (Motion at 8–10).

a. Effects of Continuing Litigation

The first factor the Court analyzes in assessing the settlement is the potential risk to Plaintiffs and the putative class if the litigation were to continue.

Plaintiffs believe their claims are strong on the merits but recognize that "a number of defenses asserted by Defendant present serious threats to the ultimate success of the classwide claims." (Motion at 11). While the Court declines to opine on the relative strengths of the parties' arguments at this stage in the case, the Court notes that, in its Motion for Summary Judgment (ECF. No. 157-2), and various motions in limine, XPO raised colorable arguments that posed a degree of risk to Plaintiffs' potential for success. Accordingly, the Court finds that the uncertainty of class-wide recovery, coupled with the delay and expense of continued proceedings in a case that has already endured three years of litigation, counsels that a settlement best mitigates the risk and ensures recovery to the class.

This factor therefore favors a finding that the settlement agreement is fair, adequate, and reasonable.

b. Amount Offered and Allocation of Class Member Settlement Shares

The proposed settlement totals $9.5 million. Of this amount, up to $6,123,650.00 is allocated to the class members, which provides for a payout of approximately $542 per workweek per Class Member, or more than $27,000 per year. The six named-Plaintiffs are each allocated a $10,000 service award, the cost of administration to be paid from the gross settlement fund is estimated to be $9,500, and Plaintiffs' counsel requests $135,000 in costs and up to 33.33%—or $3,166,350.00—of the settlement amount in attorneys' fees. The agreement also allocates $20,000 for Plaintiffs' PAGA claims, of which 75% ($15,000) shall be paid to the state of California.

Plaintiffs aver that the outcome for class members—"$542 per week per Class Member, or more than $27,000.00 per year—[is] a stellar result." (Motion at 14). Despite the fact that Plaintiffs' prayer for damages was $51,976,000, (*see id.*), the Court agrees that in light of the risks of continued litigation, a settlement of $9.5 million appears reasonable and adequate.

"Cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Justice,* 688 F.2d at 628. Even if a higher award per Class Member was possible, "the very essence of a settlement is compromise." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998). Here, though the settlement amount is only 18.2% of the amount of damages sought, the Court finds the amount reasonable and adequate, particularly in light of the risks to the Plaintiffs' chances of class-wide recover posed by continuing litigation.

c. Attorneys' Fees

The parties have agreed to grant class counsel fees of up to one-third of the settlement amount, or up to $3,166,350.00, plus costs of up to $135,000. Even where parties have agreed to an amount for attorneys' fees, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *Bluetooth*, 654 F.3d at 941. Although there are two methods to determine attorneys' fees in common fund cases—namely, the lodestar approach and the percentage approach—"the main inquiry is whether the end result is reasonable." *Cox v. Clarus Mktg. Grp.*, 291 F.R.D. 473, 482 (S.D. Cal. 2013) (citing *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)).

Under the lodestar approach, attorneys are awarded an amount calculated by multiplying the hours reasonably expended on litigation by a reasonable hourly rate. *Bluetooth*, 654 F.3d at 941. The percentage method, however, rewards fees as a percentage of the common fund recovered for the class. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "Courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award." *Bluetooth*, 654 F.3d at 942. However, "[t]he district court may adjust the benchmark when special circumstances indicate a higher or lower percentage would be appropriate." *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming district court's award of one-third the settlement fund, finding the award was not an abuse of discretion given the "complexity of issues and risks" and class benefits beyond the monetary settlement alone).

Here, although a 1/3 fee award is markedly higher than the ordinary 25% benchmark, given the years of litigation in this case the Court is not convinced at this point that such an award cannot potentially be justified. The parties will have the opportunity to fully develop their justification for such an award through a motion for attorney's fees at the final approval stage.

For the purposes of this motion, the Court finds that class counsel's request of fees is reasonable, and that it falls within a range of possible approval.

d. Class Representative Awards

The named Plaintiffs each request $10,000 in class representative awards. Class representative incentive awards are "fairly typical in class action cases." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). As long as (1) Plaintiffs and class counsel do not "have any conflicts of interest with other class members" and (2) Plaintiffs will "prosecute the action vigorously on behalf of the class," there is no "fundamental conflict . . . that would prevent settlement class certification." *Id.*

A district court may look to the following factors in determining the reasonableness of an incentive reward: "the actions the plaintiff has taken to protect the interest 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 reasonabl[e] fear[s of] workplace retaliation." *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (internal citation omitted).

Here, Plaintiffs assert that they worked extensively "with Class Counsel, including providing information on Defendant's alleged employment practices, reviewing documents with Class Counsel, participating in mediation, sitting for deposition, preparing for and filing a motion for class certification, preparing for trial, and referring Class Counsel to other material witnesses." (Motion at 15). Given the time already expended—this case is more than three years old—, the risk of continued litigation, and the favorable settlement award, the Court agrees that awarding an incentive payment to the class representatives is reasonable under the circumstances. The Court therefore conditionally approves Plaintiffs' proposed class representative award.

Final approval of any enhancement awards will be subject to an evaluation of the factors identified above; Plaintiffs must provide detailed declarations that justify any award sought. Because the proposed award falls within a range of possible approval, the Court at this stage will allow it to move forward pending final approval.

e. Scope of Release

The Settlement Agreement requires that all Class Members release XPO of liability for any claims that "arise under any statutory or common law claim which w[ere] asserted in either the Operative Complaint, or in any of the prior complaints in the Lawsuit" and any claims "arising out of or related to the allegations of misclassification of Named Plaintiffs and Class Members as independent contractors set forth in the Operative Complaint" that "pertain to any time in the Release Period."

(Settlement Agreement at 15). "A settlement agreement may preclude a party from bringing a related claim in the future 'even though the claim was not presented and might not have been presentable in the action,' but only where the released claim is based on the identical factual predicate as that underlying the claims in the settled class action." *Hesse v. Spring Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (citations omitted). A proposed settlement agreement is overly broad when it fails to limit the claims released to those based on the facts alleged in the complaint. *See id.*

Here, the released claims are limited solely to any claims alleged in the various complaints filed by Plaintiffs in this case, and any claims arising out of or related to the allegations of misclassification of Named Plaintiffs and Class Members as independent contractors set forth in the Operative Complaint[.]" Thus, the scope of the release provided in the settlement fits squarely within the parameters established by the Ninth Circuit.

After reviewing the parties' submitted materials, and acknowledging that to date, Plaintiffs have not notified the Court of any objections to the Settlement Agreement, the Court finds that the proposed class settlement is fair, adequate, and reasonable.[5]

B. The Proposed Notice

Having found the proposed settlement is fair and reasonable, "[t]he court must direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed R. Civ. P. 23(e)(1). Further, for a Rule 23(b)(3) class, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be reasonably identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1138, 1352 (9th Cir. 1980)).

The Court finds the proposed notice sufficiently informs the class members of (1) the nature of the litigation and the certified class; (2) the terms of the Settlement Agreement; (3) the monetary amounts that the Settlement will provide class members; (4) and the consequences of taking or foregoing the various options available to class members.

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[5] The Court notes that putative Class Members Osman R. Garcia, Luis Humberto Montalvo, Mariano A. Saravia, Armando Henriquez, Luis Meza, and Vicente Renderos have opted out of the Settlement Agreement. (*See* ECF No. 257). Accordingly, they will not be bound by the Agreement.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Plaintiffs propose that their preferred settlement administrator, Phoenix Class Action Administration Solutions, shall prepare, print, and mail the Notice to the Class Members. The Court has no objection to this method of notice. However, the proposed notice does not yet contain dates for: (1) the deadline for requesting exclusion from the Settlement; (2) the deadline for objecting to the Settlement; and (3) the date of the Final Approval Hearing. Accordingly, the Court hereby sets the following dates:

- Date by which the notice must be postmarked: October 18, 2021
- Deadline by which any objections and requests for exclusion must be postmarked: December 6, 2021
- Date of Final Approval Hearing: December 18, 2021 at 9:00 am

With the addition of the dates provided immediately above, the Court finds that the proposed notice and method of delivery is sufficient, and approves the notice.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion, preliminarily approves the Class Action Settlement Agreement, and approves Plaintiffs' proposed notice.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer _____