

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KENNETH J. LEE, MARK G.
THOMPSON, and DAVID C. ACREE,
individually, on behalf of others similarly
situated, and on behalf of the general public,

Plaintiffs,

vs.

JPMORGAN CHASE & CO.; JPMORGAN
CHASE BANK, NATIONAL
ASSOCIATION; and DOES 1-10, inclusive,

Defendants.

CASE NO. SACV 13-511-JLS (JPRx)

**ORDER GRANTING PLAINTIFFS’
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT (Doc. 91) AND
PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES, COSTS AND
CLASS REPRESENTATIVES’ AND
OPT-INS’ ENHANCEMENTS (Doc. 81)**

1 Before the Court is Plaintiffs’ Unopposed Motion for Final Approval of Class
2 Action Settlement. (Final Approval Mot., Doc. 91.) Also before the Court is
3 Plaintiffs’ Motion for Attorneys’ Fees, Costs and Class Representatives’ and Opt-
4 Ins’ Enhancements. (Attorneys’ Fees Mot., Doc. 81.) Having reviewed the papers,
5 held a fairness hearing, and taken the matter under submission, the Court GRANTS
6 Plaintiffs’ Motions.

7

8 **I. BACKGROUND**

9 On March 29, 2013, Plaintiffs Kenneth Lee and Mark Thompson filed a Class
10 and Collective Action Complaint against Defendants, alleging JPMorgan Chase
11 violated California and federal statutory wage laws and engaged in unfair
12 competition in violation of California Business and Professions Code § 17200 *et*
13 *seq.* (Compl., Doc. 1.) According to the Complaint, JPMorgan Chase misclassified
14 Plaintiffs and putative class members who were or are commercial and review
15 appraisers as exempt employees under federal and California wage and hour laws.
16 (Id. ¶¶ 1, 39-68.) Specifically, Plaintiffs allege that Defendants misrepresented to
17 these employees that they were exempt and therefore were not entitled to overtime
18 pay for hours worked in excess of forty hours a week. (Id. ¶ 19.) On April 5, 2013,
19 Joel Cuthbert filed a written consent to join the collective action. (Settlement
20 Agreement, Doc. 68-1, Ex. A, at 2.) On May 1, 2013, Plaintiffs filed a First
21 Amended Complaint (“FAC”), adding claims for waiting time penalties under
22 California Labor Code § 203 and civil penalties under the Private Attorneys General
23 Act of 2004, Cal. Labor Code § 2698, *et seq.* (“PAGA”). (FAC, Doc. 10.)

24 On July 2, 2013, Plaintiffs filed their Second Amended Complaint (“SAC”),
25 which also added David C. Acree as a class representative Plaintiff. (SAC, Doc.
26 38.). The SAC defines the Collective Class as:

27

28

1 All persons who are or have been employed by Defendants as a
2 commercial production appraiser (“Appraiser I;” Appraiser II;” “Senior
3 Appraiser;” or positions consisting of similar job duties) in the CTL
4 Appraisal division within the United States at any time from three years
5 prior to the filing of this Complaint to the final disposition of this case.

6 (Id. ¶ 18.) The SAC defines the California Class similarly as:

7 All persons who are or have been employed by Defendants as
8 Appraisers in the CTL Appraisal division (including production
9 appraisers and review appraisers, with such titles as “Appraiser I;”
10 “Appraiser II;” “Senior Appraiser;” “Review Appraiser;” “Senior
11 Review Appraiser;” and any other position consisting of similar duties)
12 within the State of California at any time from four years prior to the
13 filing of this Complaint to the final disposition of this case.

14 (Id. ¶ 32.) The proposed California Class includes two sub-classes for related
15 penalty claims. (Id. ¶¶ 33-34.)

16 On August 14, 2013, the parties stipulated to dismiss Plaintiffs’ claims and
17 compel arbitration. (Stip., Doc. 46.) Plaintiffs and putative class members had
18 signed arbitration agreements with Defendants for claims related to their
19 employment. Some of the agreements explicitly required arbitration on an
20 individual basis, others were silent on the question of class arbitration, and 21
21 putative class members had not signed arbitration agreements at all. (Preliminary
22 Approval Order at 3, Doc. 80.) On November 4, 2013, while this Court was
23 considering whether the Court or an arbitrator should decide whether the agreements
24 without express class waivers allowed arbitration to proceed on a class basis, Myles
25 Norton filed a written consent to join the collective action. (Settlement Agreement
26 at 3.) On November 14, 2013, this Court held that an arbitrator should decide
27
28

1 whether the agreements prohibit class arbitration, and thus dismissed the action.
2 (Order at 8, Doc. 63.)

3 Defendants appealed this ruling to the Ninth Circuit. (Notice of Appeal, Doc.
4 64.) Meanwhile, Plaintiffs filed demands to arbitrate their claims on either an
5 individual or class-wide basis before the American Arbitration Association
6 (“AAA”), depending on which arbitration agreement each Plaintiff had signed.
7 (Settlement Agreement at 3.)

8 On June 17, 2014, the parties participated in a mediation session before wage
9 and hour mediator Michael Dickstein. (Amended Schwartz Decl. ¶ 9, Doc. 75-1.)
10 The original mediation session did not immediately result in a settlement, but the
11 parties and mediator Dickstein conducted several follow-up conferences over the
12 next several weeks. (Id. ¶¶ 9-10; Settlement Agreement at 5, n. 1.) On October 10,
13 2014, the parties finally executed the Settlement Agreement (Amended Schwartz
14 Decl. ¶ 10), and Plaintiffs filed an Unopposed Motion for Preliminary Approval of
15 Class Action Settlement. (Preliminary Approval Mot., Doc. 67.)

16 The Settlement Agreement defines “Covered Positions” as “the following
17 positions in JPMorgan Chase’s CTL division that current and former employees
18 who are covered by this Stipulation held: Appraiser I; Appraiser II; Senior
19 Appraiser; Commercial Appraiser – Team Lead Commercial Production Appraiser;
20 Senior Commercial Review Appraiser; Review Appraiser; and Senior Review
21 Appraiser.” (Id. § 1.11.) The Settlement Agreement further provides that “[f]or a
22 position to be a Covered Position, an employee must have worked in that position:
23 (a) at any time from March 29, 2010 through the Preliminary Approval Date in any
24 state other than California, and/or (b) at any time from March 29, 2009 through the
25 Preliminary Approval Date in California.” (Id.)

26 The Settlement Agreement provides for a settlement fund not to exceed the
27 gross sum of \$2,400,000.00. (Id. § 1.37.) No portion of the settlement fund will
28

1 revert back to Defendants unless the Settlement fails or more than 5% of the
2 California Class opts out. (Id. §§ 2.2.1, 2.11.1.) In addition to the settlement fund,
3 Defendants agree to pay each Participating Claimant's share of payroll taxes for the
4 share of his or her settlement payment deemed to be wages. (Id. § 2.2.1.)

5 The settlement fund will be used to pay for (1) Plaintiffs' attorneys' fees and
6 costs, (2) reimbursement for actual litigation costs (not to exceed \$25,000), (3)
7 enhancement payments for the three named Plaintiffs and the two representatives
8 who filed written consents to join the class action, (4) a payment of \$7,500 to the
9 California Labor Workforce Development Agency ("LWDA") for the PAGA
10 claims, and (5) settlement administration expenses. (Id. §§ 2.2.6, 2.5.6, 2.9.1,
11 2.9.2.) More specifically, the Settlement Agreement allows Plaintiffs' counsel to
12 apply for an award of one-third of the \$2,400,000.00 (\$800,000.00) as attorneys'
13 fees. (Id. § 2.9.1.) In the event that this Court awards less than the one-third
14 amount requested for attorneys' fees and/or costs, any amount not awarded will be
15 distributed to the putative class members, with no portion reverting back to
16 Defendants. (Id. § 2.9.1.) The Settlement Agreement also allocates enhancement
17 payments, totaling \$45,000.00, to the Plaintiffs as follows: \$15,000.00 to Kenneth
18 Lee, \$10,000.00 to Mark Thompson, \$10,000.00 to David Acree, \$5,000.00 to Joel
19 Cuthbert, and \$5,000.00 to Myles Norton. (Id. § 2.9.2.) Expenses paid to the claims
20 administrator are not to exceed \$20,000.00. (Amended Schwartz Decl. ¶ 19.) The
21 remainder of the settlement fund will be distributed to Class Members and no funds
22 will revert to Defendants. (Settlement Agreement §§ 1.1, 1.21, 1.37, 2.2.1.)

23 Participating Claimants will be allocated a share of the settlement fund based
24 on the number of workweeks they worked for Defendants during the relevant time
25 period. (Id. § 2.2.2.) For those in the California Class, a 1.64 multiplier will be
26 used to provide them with a larger pro rata share per workweek, as a result of the
27 release of their additional claims for meal/rest period violations, PAGA penalties,
28

1 waiting time violations, and wage statement violations under California law. (Id.)
2 If fewer than all of the putative class members participate in the settlement
3 distribution, the settlement payment to any Participating Claimant will increase on a
4 pro rata basis, subject to the limitation that no Participating Claimant will be paid
5 greater than twice the initial amount calculated to be paid to that Participating
6 Claimant. (Id.) Any additional funds that cannot be paid to the Participating
7 Claimants due to the above restriction will be distributed by *cy pres* to the Legal Aid
8 Society – Employment Law Center. (Id.; Preliminary Approval Order at 22, Doc.
9 80; Final Approval Mot. at 4; Schwartz Approval Decl. ¶ 17, Doc. 91-2.)

10 In addition to the monetary benefits of the Settlement Agreement, the
11 Commercial Appraiser I position at JPMorgan Chase will be reclassified as non-
12 exempt, allowing employees in that position in the future to be compensated for
13 their overtime and, in California, any missed meal/rest periods. (Settlement
14 § 2.12.6.)

15 In return for a share of the settlement fund and enhancement payments,
16 Plaintiffs agree to release any and all claims and causes of actions against
17 Defendants, “whether or not acting in the course and scope of employment...”¹ (Id.
18 § 1.9.) The other Class Members agree to release “any and all federal wage and
19 hour law claims . . . that accrued on any date up through and including . . . final
20 approval of the Settlement, for any type of relief . . . arising under the Fair Labor
21 Standards Act of 1938 (“FLSA”).” (Id. § 1.33.) As to state law claims, Class
22 Members similarly agree to release any and all wage and hour claims they may have
23 against Defendants under the relevant California laws for Class Members in
24 Covered Positions. (Id. § 1.34.) As a result, only the Plaintiffs receiving

25

26 ¹ The parties have stipulated that nothing in the Settlement Agreement releases Plaintiff
27 Thompson’s separate claims as set forth in the individual complaint he filed against Defendants in
28 this Court in Case No. SACV 14-01181 JLS (JPRx). (Settlement Agreement at 7 n. 2.)

1 enhancement payments are required to execute a general release of *all* claims
2 against Defendants existing up to the date of final approval.

3 Class Members who opt-in or, if they are in California, do not opt-out of the
4 Settlement will have 180 days to cash their settlement checks. (Id. § 2.6.4.) Any
5 amounts represented by uncashed checks will be distributed to the other
6 Participating Claimants on a pro rata basis, and any funds left over after that
7 redistribution will be distributed by *cy pres*, as discussed above. (Id. § 2.12.1.) The
8 back of the settlement check will have an endorsement that the Participating
9 Claimant must sign to release their federal and state law claims, as defined above,
10 and to receive his or her portion of the settlement fund. (Id. § 1.38.)

11 The Court granted Plaintiffs' motion for preliminary approval on November
12 13, 2014. (Doc. 78.) On November 21, 2014, Class Counsel filed a Revised Class
13 Notice pursuant to the Court's Order. (Revised Class Notice, Ex. A., Doc. 79.) The
14 Court issued an Amended Preliminary Approval Order on November 24, 2014.
15 (Preliminary Approval Order, Doc. 80.)

16 On October 20, 2014, Defendants mailed CAFA Notices to the relevant
17 authorities. (Schwartz Approval Decl. ¶ 11; Final Approval Mot. at 7.) On
18 December 18, 2014, the parties' Claims Administrator, CPT Group, Inc., issued
19 notice to the Class pursuant to the terms of the Settlement Agreement. (Shirinian
20 Decl. ¶ 7, Doc. 91-4; Shirinian Decl., Ex. A, Doc. 91-4.) Four Notice Packets were
21 re-mailed by CPT either because Class Members requested the Notice packet to be
22 re-mailed or because CPT was provided with a new address. (Shirinian Decl. ¶ 9.)
23 As of March 5, 2015, no Notice Packets have been returned to CPT as
24 undeliverable. (Id. ¶¶ 8, 11.) CPT has not received any requests for exclusion. (Id.
25 ¶¶ 12, 18.) Further, there are no outstanding disputes regarding calculated work
26 weeks for the estimated awards and no deficient, invalid, or late responses. (Id. ¶¶

27

28

1 13-16.) Finally, no objections to the Settlement have been filed by any of the 162
2 Class Members. (Id. ¶¶ 17-18.)

3 Pursuant to the Settlement Agreement, on February 2, 2015, Class Counsel
4 moved for attorneys’ fees, costs, and enhancement payments. (Attorneys’ Fees
5 Mot.) On March 6, 2015, Plaintiffs filed their Unopposed Motion for Final
6 Approval of Class Action Settlement. (Final Approval Mot.)

7

8 **II. FINAL APPROVAL OF SETTLEMENT**

9 Rule 23(e)(2) requires the Court to determine whether the proposed
10 settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). To determine
11 whether a settlement agreement is fair, reasonable, and adequate, “a district court
12 must [ultimately] consider a number of factors, including: (1) the strength of
13 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further
14 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
15 amount offered in settlement; (5) the extent of discovery completed, and the stage of
16 the proceedings; (6) the experience and views of counsel; (7) the presence of a
17 governmental participant;² and (8) the reaction of the class members to the proposed
18 settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (internal
19 citation and quotation marks omitted). “The relative degree of importance to be
20 attached to any particular factor will depend upon and be dictated by the nature of
21 the claim(s) advanced, the type(s) of relief sought, and the unique facts and
22 circumstances presented by each individual case.” *Officers for Justice v. Civil Serv.*
23 *Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). “It is the settlement taken as a whole,
24 rather than the individual component parts, that must be examined for overall
25 fairness, and the settlement must stand or fall in its entirety.” *Staton*, 327 F.3d at

26

27 ² This factor does not apply in the case.

28

1 960 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

2 The Court finds the factors listed above favor final approval of the Settlement.

3

4 **A. Strength of Plaintiffs' Case**

5 Plaintiffs maintain that they have a strong case and would likely prevail at
6 trial, but “recognize that they face several significant risks with continued
7 litigation.” (Final Approval Mot. at 9.) Plaintiffs note that “[n]o Ninth Circuit
8 authority determines Appraisers’ classification expressly,” “[a]ll but approximately
9 25 of the 162 Appraisers signed arbitration agreements, at least 99 of which
10 included explicit class waivers,” and “Plaintiffs further faced a risk of being unable
11 to certify a class and collective action due to Defendants’ arguments that: (1) no two
12 Appraisers do their job exactly the same; (2) the potentially significant size of each
13 Class Member’s full claim militates against a showing of superiority; (3) each
14 claimant may seek to prove different types of damages . . . ; and (4) [] Defendants’
15 purported Due Process right to cross-examine each Class Member on job duties and
16 to challenge his or her claimed hours necessitates mini-trials.” (Id.) As a result,
17 Plaintiffs argue that there are significant risks of losing on the merits at trial, that the
18 Court will find a class action inefficient, and that at least 99 Class Members would
19 be required to prosecute individual arbitrations without a settlement. (Id. at 9-10.)
20 Further, Plaintiffs contend that they face “the risk of being unable to establish that
21 Defendants’ violation of the labor laws was ‘willful’ under the FLSA or that
22 Defendants did not have a good faith defense to Plaintiffs’ Labor Code Section 203
23 and 226 claims.” (Id. at 10.) Finally, Plaintiffs argue that “Defendants’ pending
24 appeal, which challenges the Court’s ruling that the arbitrator should decide whether
25 the arbitration agreements permit class-wide arbitration, would result in further
26 delay and increased risk and expenses from litigating either individual or class
27 arbitrations.” (Id.) The Court therefore concludes that this factor weighs in favor of
28

1 granting final approval.

2

3 **B. Complexity and Expense of Further Litigation**

4 This action settled after 18 months of litigation. Plaintiff notes that if this
5 action proceeds, “[c]ontinued litigation would be both expensive and time
6 consuming; whereas this Settlement will result in payment within months. (Id.) As
7 detailed above, Defendants’ have appealed the Court’s prior ruling regarding
8 whether the arbitrator or Court should decide whether the arbitration agreements
9 permit class-wide arbitration. As a result, without settlement, Plaintiffs would likely
10 have to continue litigation in this Court, the Ninth Circuit, and before arbitrators, on
11 potentially both an individual and class-wide basis. (Id.) Given the risks inherent in
12 the class certification process and trial discussed above, the Class could recover
13 nothing from these extensive additional proceedings. Undoubtedly, the expenses
14 incurred by the class will increase as the case progresses. The Court therefore finds
15 that this factor favors approving the Settlement.

16

17 **C. Risk of Maintaining Class Action Status through Trial**

18 As discussed above, this Court previously determined that the arbitrator
19 would determine whether class-wide arbitration is available when an arbitration
20 agreement is silent on that point. An appeal of this decision was pending in the
21 Ninth Circuit prior to settlement. Therefore, there is some risk of maintaining class
22 certification depending on how the Ninth Circuit and/or the arbitrator determine this
23 issue. The risk that Plaintiffs would be unable to certify a class should the action
24 proceed in litigation favors approving the Settlement.

25

26 **D. Amount Offered in Settlement**

27 The Court finds that the amount offered in settlement is reasonable. The
28

1 Settlement Agreement provides for a settlement fund of \$2,400,000.00. (Settlement
2 Agreement § 1.37.) No portion of the settlement fund will revert back to
3 Defendants because no Class Member has filed a request for exclusion. (Id.
4 §§ 2.2.1, 2.11.1.)

5 Defendants have agreed to pay each Participating Claimant's share of payroll
6 taxes for the share of his or her settlement payment deemed to be wages. (Id.
7 § 2.2.1.) Class Counsel has applied for \$800,000 in attorneys' fees and \$18,000³ in
8 costs. (Attorney's Fees Mot. at 1; Final Approval Mot. at 19.) The three named
9 Plaintiffs and the two representatives who filed written consents to join the class
10 action request a total of \$45,000 in enhancement payments. (Attorneys' Fees Mot.
11 at 15-20.) \$7,500 will be paid to the LWDA for the PAGA claims. (Settlement
12 Agreement §§ 2.2.6, 2.9.1.) Finally, CPT has requested \$20,000 in settlement
13 administration expenses. (Shirinian Decl. ¶ 20.) The remainder of the settlement
14 fund will be distributed to Class Members and any additional funds that cannot be
15 paid to the Participating Claimants will be distributed by *cy pres* to the Legal Aid
16 Society – Employment Law Center. (Final Approval Mot. at 5.)

17 With the deductions listed above and the establishment of a “reserve fund” to
18 resolve disputes, Plaintiffs estimate that a total of \$1,472,500 will be distributed to
19 Participating Claimants. (Suppl. Shirinian Decl. ¶ 3, Doc. 93.) “[T]he average
20 settlement payment per Participating Class Member is estimated at \$9,089.51. The
21 highest estimated settlement payment is \$25,160.84, while the lowest estimated
22 payment is \$54.41, for a person who had only ten days of employment in a relevant
23 position during the class period.” (Id.; *see also* Suppl. Schwartz Decl. ¶ 3, Doc. 92.)
24 Finally, the Commercial Appraiser I position at JPMorgan Chase will be reclassified

25

26 ³ On February 2, 2015, Plaintiffs' moved for up to \$25,000 for actual litigation costs in their
27 Attorneys' Fees Motion. (Attorneys' Fees Mot. at 1.) However, when moving for final approval,
28 Plaintiffs clarified that they are seeking only \$18,000 in costs. (Final Approval Mot. at 19.)

1 as non-exempt, allowing employees in that position in the future to be compensated
2 for their overtime and, in California, any missed meal/rest periods. (Id. § 2.12.6.)
3 The Settlement therefore offers a substantial benefit to the Class in terms of both
4 significant settlement payments and meaningful prospective relief. (See Final
5 Approval Mot. at 11.)

6 Considering the difficulties, uncertainty, and likely length of the proceedings
7 in this case before any recovery could be obtained, the Court finds that this factor
8 weighs in favor of granting final approval.

9

10 **E. Stage of the Proceedings**

11 This factor requires the Court to evaluate whether “the parties have sufficient
12 information to make an informed decision about settlement.” *Linney v. Cellular*
13 *Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). While extensive formal
14 discovery has not been completed in this case, Plaintiff contends that during that
15 time the parties “briefed in detail the merits of this action in their mediation briefs,
16 have briefed to the Court their arguments on whether the ‘silent’ arbitration
17 agreements prohibit class arbitration, and appealed and fully briefed this Court’s
18 ruling to the Ninth Circuit.” (Final Approval Mot. at 13.) Further, Plaintiffs assert
19 that they “also submitted several declarations and hundreds of pages of exhibits
20 detailing the duties of Appraisers and the policies they were required to follow.”
21 (Id.) Finally, prior to mediation, Plaintiffs conducted “extensive analysis of class-
22 wide damages data to enable the parties to assess the reasonableness of the
23 Settlement amount.” (Id.) Class Counsel represents that the information exchanged
24 was sufficient to allow Plaintiffs to properly evaluate the case. (Id.)

25 The Court recognizes that settlement occurred before class certification.
26 However, the parties have shown that they have spent significant time investigating
27 this action to allow for an informed decision, but not so much time that the
28

1 settlement amount will be unnecessarily depleted by extensive costs and fees. The
2 Court therefore finds that the parties have sufficient information to make an
3 informed decision about settlement. As such, the Court finds that this factor favors
4 approving the Settlement.

5

6 **F. Absence of Collusion**

7 The Court finds no signs, explicit or subtle, of collusion between the parties.
8 The requested award of \$800,000 in attorneys' fees and \$18,000 in costs, which is
9 authorized by the Settlement Agreement, is not disproportionate to the benefits that
10 have inured to the class as a result of this action. The same is true with respect to
11 the \$45,000 in enhancement payments Plaintiffs seek under the Settlement.
12 Moreover, this Settlement is the result of a mediation held before wage and hour
13 mediator Michael Dickstein. The mediator's involvement in the Settlement is an
14 additional factor that supports the argument that it is non-collusive. *See Satchell v.*
15 *Fed. Express Corp.*, No. C 03-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13,
16 2007).

17 Accordingly, the Court is satisfied that the Settlement is the result of arms-
18 length, non-collusive, and informed negotiations.

19

20 **G. Experience and Views of Counsel**

21 Class Counsel, who have prior experience litigating class action lawsuits (*see*
22 *Schwartz Fee Decl.* ¶¶ 10-14, Doc. 82; *Ho Fee Decl.* ¶¶ 3-6, Doc. 83.), have
23 endorsed the Settlement as fair, reasonable, and adequate. (*Schwartz Fee Decl.* ¶ 3;
24 *Ho Fee Decl.* ¶¶ 8-10.) "The recommendations of plaintiffs' counsel should be
25 given a presumption of reasonableness." *In re Omnivision Tech., Inc.*, 559 F. Supp.
26 2d 1036, 1043 (N.D. Cal. 2008) (quotation marks omitted). Accordingly, this factor
27 favors approving the Settlement.

28

1

2 H. Reaction of Class Members to Proposed Settlement

3 Notice was sent to all Class Members pursuant to the Court's Preliminary
4 Approval Order. (Shirinian Decl. ¶ 7.) The deadline for opt-outs and objections has
5 passed, and no exclusion requests or objections to the Settlement have been
6 received. (Id. ¶¶ 12, 17-18.) "[T]he absence of a large number of objections to a
7 proposed class action settlement raises a strong presumption that the terms of a
8 proposed class settlement action are favorable to the class members." *Nat'l Rural*
9 *Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).
10 Accordingly, the Court finds this factor weighs in favor of granting final approval.

11 Having considered the foregoing factors, the Court finds the proposed
12 Settlement is fair, reasonable, and adequate.

13

14 III. ATTORNEYS' FEES

15 Class Counsel seeks an award of attorneys' fees of \$800,000, which is one-
16 third of the settlement fund. (Attorneys' Fees Mot. at 1.)

17 Rule 23 permits a court to award "reasonable attorneys' fees . . . that are
18 authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "[C]ourts
19 have an independent obligation to ensure that the award, like the settlement itself, is
20 reasonable, even if the parties have already agreed to an amount." *In re Bluetooth*
21 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). In the Ninth Circuit,
22 the benchmark for a fee award in a common fund case is 25% of the recovery
23 obtained. *Id.* at 942. The Ninth Circuit has identified a number of factors the Court
24 may consider in assessing whether an award is reasonable and whether a departure
25 from that figure is warranted, including: (1) the results achieved; (2) the risk of
26 litigation; (3) the skill required and quality of the work; and (4) the contingent
27 nature of the fee and the financial burden carried by the plaintiffs. *Vizcaino v.*

28

1 *Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). The Court will consider
2 each in turn.

3
4 **A. Results Achieved**

5 “The overall result and benefit to the class from the litigation is the most
6 critical factor in granting a fee award.” *In re Omnivision Techs, Inc.*, 559 F. Supp.
7 2d 1036, 1046 (N.D. Cal. 2008) (citation omitted). Here, a \$2,400,000 settlement
8 fund was created for Class Members. After subtracting the authorized and requested
9 fees and costs, \$1,472,500 will be distributed to the 162 Participating Claimants,
10 with each Class Member receiving cash payments ranging from \$54.41 to
11 \$25,160.84, with an average settlement payment of \$9,089.51. (Suppl. Shirinian
12 Decl. ¶ 3; Suppl. Schwartz Decl. ¶ 3, Doc. 92; Attorneys’ Fees Mot. at 7-8.)
13 Moreover, the fact that no Class Member opted-out and no Class Member objected
14 further supports the conclusion that Class Counsel achieved an exceptional result on
15 behalf of the class.

16 Thus, this factor weighs in favor of granting the requested fee award.

17
18 **B. Risk of Litigation**

19 The risk of litigation further supports this award. As discussed above,
20 Plaintiffs face numerous risks if the case were to proceed further in litigation.
21 Plaintiffs note that “[t]here is no Ninth Circuit authority on point regarding
22 Appraisers’ classification” and “[a]ll but approximately 25 of the 162 Appraisers
23 signed arbitration agreements, at least 99 of which included explicit class waivers.”
24 (Attorneys’ Fees Mot. at 9.) Further, Defendants have made numerous arguments in
25 opposition to Plaintiffs efforts to certify the class and maintain the case as a
26 collective action. (*Id.*) Plaintiffs also recognize that they “faced the risk of being
27 unable to establish that Defendants’ violation of the labor laws was ‘willful’ under
28

1 the FLSA.” (Id.) If Defendants were to succeed in opposing class certification or
2 prevailing at trial, Class Members could receive no recovery, and additional
3 resources would be spent by the parties.

4 The Court finds the risk that further litigation might result in Plaintiffs and
5 Class Members not recovering anything weighs in favor of granting the requested
6 fee award. *See Omnivision*, 559 F. Supp. 2d at 1047.

7
8 **C. Skill Required and Quality of Work**

9 Class counsel has expended approximately 1500 hours on this case since it
10 began on March 29, 2013. (Attorneys’ Fees Mot. at 10; Schwartz Approval Decl. ¶
11 13; Schwartz Approval Decl., Ex. 1, Doc. 91-2; Ho Approval Decl. ¶ 8; Ho
12 Approval Decl. Ex. 1, Doc. 91-3.) Class Counsel “investigated and filed the
13 complaint; successfully resisted a motion for a protective order that sought to
14 prohibit communications with the Class; successfully resisted Defendants’ motion
15 requesting the Court to rule that arbitration would be permitted on an individual-
16 only basis; prepared and filed a class arbitration and three individual arbitration;
17 engaged in mediation and extensively brief the merits of the claims . . . ; and
18 overs[aw the] drafting and provision of notice to the Class.” (Attorneys’ Fees Mot.
19 at 2-3; *see also* Schwartz Fee Decl. ¶ 5.) This effort over the course of over two
20 years, coupled with Class Counsel’s skillful work to negotiate a settlement in which
21 Class Members will recover both monetary and prospective relief, weighs in favor
22 of awarding the requested fee.

23
24 **D. Contingent Nature of the Fee**

25 Class Counsel took this case on a contingent basis and has litigated it for over
26 two years. (Attorneys’ Fees Mot. at 11; Schwartz Fee Decl. ¶ 7, Schwartz Fee
27 Decl., Ex. B, Doc. 82.) Courts have recognized that the public interest is served by
28

1 rewarding attorneys who assume representation on a contingent basis with an
2 enhanced fee to compensate them for the risk that they might be paid nothing for
3 their work. *See In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d
4 1291, 1299 (9th Cir. 1994); *Vizcaino*, 290 F.3d at 1050. Moreover, Class Counsel's
5 commitment of resources and the expenses incurred while litigating this matter are
6 significant, further increasing the risk counsel assumed. (Attorneys' Fees Mot. at
7 11-14; *see generally* Schwartz Approval Decl.; Ho Approval Decl.) This factor
8 therefore supports awarding the fees Class Counsel seeks.

9 Accordingly, the Court finds this factor weighs in favor of awarding the
10 requested fee.

11 12 **E. Lodestar Crosscheck**

13 Finally, courts use the lodestar method as a cross-check to determine the
14 fairness of a fee award. *Vizcaino*, 290 F.3d at 1050. A lodestar multiplier of 1.5 is
15 reasonable where a case settles early. *Fischel v. Equitable Life Assurance Soc'y of*
16 *U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002). Here, Class Counsel estimates that they
17 will spend approximately 1500 attorney and paralegal hours on this case in total.
18 (Attorneys' Fees Mot. at 10.) As of March 5, 2015, at their regular and customary
19 hourly rates, Class Counsel incurred approximately \$630,225.00 in attorneys' fees
20 under the lodestar approach.⁴ (Final Approval Mot. at 18; Schwartz Approval Decl.
21 ¶ 13; Ho Approval Decl. ¶ 8.) Class counsel seeks \$800,000 in attorneys' fees, only
22 a 1.27 "fee multiplier" under the lodestar approach. (Attorneys' Fees Mot. at 18.)
23 The lodestar crosscheck therefore confirms the reasonableness of a \$800,000 fee
24 award in this case.

25 _____
26 ⁴ Class Counsel asserts that they will continue to spend time on securing final approval and
27 assuring payout to Class Members, which will increase the amount in attorneys' fees under the
28 lodestar approach. (Final Approval Mot. at 18.)

1 For the foregoing reasons, the Court finds departure is warranted from the
2 Ninth Circuit's benchmark of 25% of the common fund recovery. Accordingly, the
3 Court approves Class Counsel's request for attorneys' fees in the amount of
4 \$800,000.

6 IV. COSTS

7 Class Counsel also requests the Court approve \$18,000 for actual and
8 expected litigation costs associated with this case. (Final Approval Mot. at 19.)
9 Class Counsel asserts that, as of March 5, 2015, they have incurred slightly more
10 than \$18,000 in actual and expected costs. (Id.; Schwartz Approval Decl. ¶¶ 14-15;
11 Schwartz Approval Decl., Ex. 2, Doc. 91-2; Ho Approval Decl. ¶¶ 9-13; Ho
12 Approval Decl., Ex. 2, Doc. 91-3.) The Settlement Agreement provides that Class
13 Counsel may seek an award of up to \$25,000 for costs. (Settlement Agreement
14 § 2.9.1.) The total amount Class Counsel now seeks for costs complies with the
15 limitation in the Settlement Agreement. "Attorneys may recover their reasonable
16 expenses that would typically be billed to paying clients in non-contingency
17 matters." *Omnivision*, 559 F. Supp. 2d at 1048. Class Counsel has documented
18 expenses incurred in prosecuting this action, which include mediation fees, court
19 and arbitration filing fees, photocopying, postage, legal research expenses, and
20 travel expenses. (Attorneys' Fees Mot. at 14; Schwartz Fee Decl. ¶ 15; Schwartz
21 Fee Decl., Ex. G, Doc. 82; Ho Approval Decl., Ex. 2.) Class Counsel also
22 anticipates some additional costs associated with the final approval process and
23 ensuring that Class Members receive their respective payments. (Ho Approval
24 Decl. ¶¶ 10, 13.) The Court concludes that Class Counsel's expenses are
25 reasonable.

26 Accordingly, the Court approves the reimbursement of \$18,000 in costs.
27
28

1 **V. ENHANCEMENT TO THE CLASS REPRESENTATIVES**

2 The Settlement Agreement authorizes enhancement awards of \$15,000.00 to
3 Kenneth Lee, \$10,000.00 to Mark Thompson, \$10,000.00 to David Acree,
4 \$5,000.00 to Joel Cuthbert, and \$5,000.00 to Myles Norton. (Settlement Agreement
5 § 2.9.2.) District courts have the discretion to award incentive payments to named
6 plaintiffs as compensation for their actions taken on behalf of the class. *Staton*, 327
7 F.3d at 977; *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000).
8 The Ninth Circuit recently emphasized that district courts must “scrutiniz[e] all
9 incentive awards to determine whether they destroy the adequacy of the class
10 representatives.” *Radcliffe v. Experian Info. Solutions Inc.*, 715 F.3d 1157, 1164
11 (9th Cir. 2013). Here, Plaintiffs Lee, Thompson, and Acree were personally named
12 as defendants in Defendants’ counterclaims. (Doc. 44 at 23.) Further, each of the
13 three Class Representatives and two opt-in Plaintiffs released large individual claims
14 and executed broad waivers in order to pursue this case as a class action.
15 (Attorneys’ Fees Mot. at 17.) Finally, each of the individuals receiving
16 enhancement payments incurred significant expenses and/or spent considerable time
17 assisting Class Counsel during litigation, with Lee spending approximately 250
18 hours and \$700, Thompson spending approximately 95 hours and \$1000, Acree
19 spending approximately 80 hours and \$885, and Norton and Cuthbert each spending
20 approximately 40 hours on this case. (Attorneys’ Fees Mot. at 19-20 (citations
21 omitted).) The proposed enhancement payments totaling \$45,000 for the three Class
22 Representatives and two opt-in Plaintiffs therefore appear justified. (*See generally*
23 Lee Decl., Doc. 71; Thompson Decl., Doc. 70; Acree Decl., Doc. 72; Cuthbert
24 Decl., Doc. 73; Norton Decl., Doc. 74.) *Cf. Rausch v. Hartford Fin. Serv. Grp.*, No.
25 01-CV-1529-BR, 2007 WL 671334, at *3 (D. Or. Feb. 26, 2007) (granting \$10,000
26 incentive fee award). The enhancement awards proposed for these Plaintiffs are
27
28

1 also reasonable on the grounds that these Plaintiffs release additional claims against
2 Defendants that other Participating Claimants are not required to release.

3 Accordingly, the Court approves the enhancement awards of \$15,000.00 to
4 Kenneth Lee, \$10,000.00 to Mark Thompson, \$10,000.00 to David Acree,
5 \$5,000.00 to Joel Cuthbert, and \$5,000.00 to Myles Norton.

6

7 **VI. CONCLUSION**

8 For the foregoing reasons, the Court GRANTS Plaintiff's Motions.

9 The parties shall file a proposed judgment in conformity with this Order
10 forthwith.

11

12

13

14 DATED: April 28, 2015

JOSEPHINE L. STATON

HONORABLE JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE

15

16

17

18

19

20

21

22

23

24

25

26

27

28