UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

This Document Relates to:
All Class Actions

CASE NO. 19-md-02913-WHO

[PROPOSED] ORDER GRANTING CLASS COUNSEL'S NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

On December 6, 2022, Class Plaintiffs, on behalf of themselves and the Settlement Class, entered into a settlement with JUUL Labs, Inc. ("JLI") and related persons and entities (the "Settlement").[1] The Court preliminarily approved the Settlement on January 30, 2023, and the Settlement has now been granted final approval. The Court has considered Counsel's Motion for Attorneys' Fees, Expenses, and Service Awards, including all arguments and briefing presented and any opposition thereto, as well as any objections to the requests.

The Court **GRANTS** the motion and **ORDERS** as follows:

I. SUMMARY OF ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS

Class Counsel request the following payments from the $255 million Settlement Fund:

- Attorneys' fees in the amount of 30% of the Settlement Fund (or $76,500,000.00), plus a proportionate amount of accrued interest;
- Expenses of up to $4,100,000. The final amount of expenses to be requested from the class fund will be determined in connection with the forthcoming motion to allocate the common benefit expense fund, as discussed further below; and
- Service awards to each of the proposed Settlement Class Representatives, ranging from $5,000 to $33,000 per plaintiff and totaling $774,600.00.

Class Counsel seek these awards solely from the proceeds of the Settlement. Class Counsel have advised that they also anticipate filing separate motions seeking approval of the Altria settlement that trails the Settlement with JLI, and for the payment of attorneys' fees and expenses from the Altria settlement. The Court will consider those motions separately.

For the reasons set forth below, the Court grants the request for the above payments.

II. ATTORNEYS' FEES

In the Ninth Circuit, there are two ways to assess requests for attorneys' fees in common fund cases: the percentage-of-the-recovery method (where the fee is evaluated as a percentage of the common fund) and the lodestar method (where the fee is evaluated by reference to counsel's

[1] Unless otherwise defined herein, capitalized terms have the same meaning as in the Class Settlement Agreement.

lodestar). *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 784 (9th Cir. 2022); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994) ("*WPPSS*")).

The Ninth Circuit has frequently held that "courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011); *Apple Device*, 50 F.4th at 78. Consistent with that discretion, the Ninth Circuit has not prescribed a rigid set of factors courts should consider when deciding which method is most appropriate in a particular case. To the contrary, "no presumption in favor of either the percentage or the lodestar method encumbers the district court's discretion to choose one or the other." *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (quoting *WPPSS*, 19 F.3d at 1296). The guidance the Ninth Circuit has provided, as well as the unique circumstances of this case, weigh in favor of using the percentage-of-recovery method to determine the appropriate fee award.

Where "the benefit to the class is easily quantified," the Ninth Circuit has "allowed courts to award attorneys a percentage of the common fund in lieu of the more time-consuming task of calculating the lodestar." *Bluetooth*, 654 F.3d 942; *c.f. Hyundai*, 926 F.3d at 570 ("When evaluating the settlement is difficult or impossible, the lodestar method may be more convenient."). Here, the benefit to the class of a single lump-sum common fund payment by JLI is easily quantified and permits a straightforward application of the percentage method. Also counseling for application of the percentage method in this case is the nature of this litigation and how it was prosecuted. In this MDL, lawyers representing plaintiffs with different types of claims (class action, personal injury, and government entity) worked collaboratively to advance the common interests of all plaintiffs. This approach ultimately contributed to the results achieved across the MDL, but it is not conducive to attempting to parse how many of the of hours spent on each task in the MDL should be credited as common benefit time for the class case versus the other types of cases. As a result, the lodestar method is not an informative way to calculate a reasonable fee award in this context.

A. The Requested Attorneys' Fees are Reasonable Under the Percentage-of-the-Recovery Method

In the Ninth Circuit, the starting point—or "benchmark"—for a fee award under the percentage-of-the-recovery method is 25% of the settlement fund. *Bluetooth*, 654 F.3d at 942 (citation omitted).[2] But adjustments may be warranted "when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The factors courts consider when determining whether to depart from the 25% benchmark are: "(1) the result achieved; (2) the risk involved in the litigation; (3) the skill required and quality of work by counsel; (4) the contingent nature of the fee; and (5) awards made in similar cases." *Larsen v. Trader Joe's Co.*, 2014 WL 3404531, at *9 (N.D. Cal. 2014) (citing *Vizcaino*, 290 F.3d at 1048-50); *see also In re Apple Inc. Device Performance Litig.*, 2023 WL 2090981, at *13-16 (N.D. Cal. Feb. 17, 2023) (applying the same factors).

The Ninth Circuit has made clear that when determining the appropriate percentage to apply, the size of the settlement fund is relevant, but the percentage does not necessarily decrease as the size of the settlement increases. *In re Optical Disk Drive Prods. Antitrust Litig.*, 959 F.3d 922, 933 (9th Cir. 2020) ("we have already declined to adopt a bright-line rule requiring the use of sliding-scale fee awards for class counsel in megafund cases."); *see also In re Toyota Corp. Unintended Marketing, Sales Pracs. and Prods. Liab. Litig.*, 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) ("there is no rule in the Ninth Circuit that requires a court to decrease the percentage of the fee award as the size of the settlement increases") (citing *Vizcaino*, 290 F.3d at 1047). Instead, the size of the fund is simply one factor courts can look to when determining a reasonable fee. *Vizcaino*, 290 F.3d at 1047. A presumption that a certain percentage applies based on the size of the settlement fund "flies in the face" of a court's obligation to "consider[] all the circumstances of the case and reach[] a reasonable percentage." *Id*. at 1048. As discussed below,

[2] When calculating the percentage, courts should use the gross settlement amount—*i.e.*, including amounts that will be used to pay notice and administrative costs and litigation expenses—as the denominator. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015).

consideration of the relevant circumstances in this case weighs in favor of an upward adjustment from the 25% benchmark and a fee award of 30% of the JLI Settlement Fund.

The result obtained for the Class—a settlement of $255,000,000 funded by some, but not all, of the Defendants—is exceptional and warrants an upward adjustment from the "benchmark." *See Apple Device*, 2023 WL 2090981, at *16 (noting $310M settlement on relatively novel computer intrusion and trespass-to-chattles claims was exceptional). The Settlement Fund is non-reversionary, meaning that class members who submit eligible claims will receive the full benefit of the Settlement (after deducting any fees, costs, and service awards the Court may award) based on their *pro rata* share of the claims submitted.

In addition, at the time of the Settlement, the sales of JUUL products had declined precipitously and there was a significant possibility that JLI would go bankrupt. The Settlement thus includes protections in the event of bankruptcy or non-payment. *Cf. Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (approving fee request where class counsel faced "double contingency" of prevailing on class claims and "find[ing] some way to collect"). Obtaining and securing $255 million in relief for class members in light of these circumstances is an excellent result for Settlement Class Members, who otherwise faced the real possibility of receiving nothing.

The result is particularly significant given the risks posed throughout the litigation. When the lawsuit was initiated the regulation of e-cigarettes was unclear and Defendants have argued that they cannot be liable under such circumstances. In particular, Defendants argued that Plaintiffs' claims were preempted by several federal laws and regulations. There was also uncertainty concerning the types of conduct and injuries that are actionable under RICO, as well as whether the Court would grant class certification. At the class certification stage, Defendants argued that no class of purchasers of nicotine or other addictive products could ever be certified and that federal courts have consistently declined to certify such classes. These risks go beyond the risks faced in other consumers products or class action litigations. And this case—unlike most tobacco cases—presented another substantial risk: the possibility of insolvency of the main

defendant. The substantial risk of non-payment presented throughout the course of the litigation weighs strongly in favor of an upward adjustment from the 25% benchmark.

Successfully litigating this case required experience, skill, and tenacity on the part of counsel. Successful coordination among the various plaintiff groups in the litigation posed substantial challenges and required close collaboration on the facts, the law, and case management among lawyers with practices in different areas. Plaintiffs' counsel also deployed their skills and experience to successfully pursue factual and legal issues on a wide range of issues, including: the history of tobacco marketing and regulation, the chemistry of JUUL products, the products' addictiveness and health risks, marketing and consumer psychology, corporate responsibility, personal injuries, and economic theories of injury and damages. Another challenge was the fact that class certification has been routinely denied in tobacco products cases. Here, counsel developed a litigation strategy and retained experts to directly address the issues that led to certification being denied in previous cases. Success in a space where other cases have failed supports an upward adjustment. *See Farrell v. Bank of Am. Corp.*, 827 Fed. Appx. 628, 630 (9th Cir. 2020) ("Indeed, excepting the district court in this particular matter, no court has ever ruled for bank accountholders on the controlling legal issues.").

Counsel has litigated this case on a contingent fee basis, dedicating nearly $200 million in attorney time and many millions in expenses, the payment of which was not guaranteed, particularly in light of the risks discussed above. It is well-recognized that representation on a contingency basis weighs in favor of an upward adjustment from the 25% benchmark. *See Larsen*, 2014 WL 3404531, at *9 ("the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing for their work.").

An award of 30% is also within the range of awards approved in the Ninth Circuit. *E.g.*, *Larsen*, 2014 WL 3404531, at *9 (citing numerous cases awarding fees of 32% or greater); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at *7-9 (N.D. Cal. Apr. 24, 2019) (30% of $8,300,000

recovery). In "megafund" settlements—those over $100 million—courts "routinely awarded class counsel fees in excess of the 25% 'benchmark,'" *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *5 & n.30 (N.D. Cal. Dec. 6, 2017) ("*NCAA I*"), *aff'd*, 768 F. App'x 651 (9th Cir. 2019) (collecting cases, including those awarding fees of 1/3 of the settlement fund); *see also In re Capacitors Antitrust Litig.*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (awarding 40% of final settlement, which brought fee award to 31% of all settlements).[3] The requested 30% fee award is thus well within the range of awards in similar cases.

B. Although Not Necessary, a Lodestar Cross-Check Supports the Requested Attorneys' Fees

Courts may consider class counsel's lodestar to "provide[] a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050. The use of the lodestar cross-check is not mandatory, and the Ninth Circuit "has consistently refused to adopt a crosscheck requirement." *Farrell*, 827 Fed. Appx. at 630. In other words, "a cross-check is discretionary." *Apple Device*, 50 F.4th at 784. And as one court observed, "[a]lthough modification of a fee award based on a

[3] *See also Benson v. DoubleDown Interactive, LLC*, 2023 WL 3761929, at *3 (W.D. Wash. June 1, 2023) (awarding 29.3% fee of a $415,000,000 settlement fund); *Andrews v. Plains All American Pipe L.P.*, 2022 WL 4453864, at *2-4 (C.D. Cal. Sept. 20, 2022) (applying the percentage method and awarding 32% of a $230 million common fund); *In re Lithium Ion Batteries Antitrust Litig.*, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018) (30% of $139,000,000 recovery); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 183285, at *2 (N.D. Cal. Jan. 14, 2016) (approving 30% fee award of $127.45 million settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575003 (N.D. Cal. Dec. 27, 2011) (approving 30% fee award of $405.02 million settlement); *Meijer, Inc. v. Abbott Labs*, No. C-07-05985 CW, 2011 WL 13392313, at *2 (N.D. Cal. Aug. 11, 2011) (33 1/3% of $52,000,000 recovery); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *2-4 (N.D. Cal. Sept. 20, 2018) (fee award of 33.3% of $104.75 million settlement, which resulted in a 1.37 multiplier); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1115 (D. Kan. 2018), *aff'd* No. 19-3008, 2023 WL 2262878 (10th Cir. Feb. 28, 2023) (awarding a 33.33% fee award in a $1.51 billion settlement); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) ("although a one-third fee would be at the top of the range of awards in megafund cases, that figure does still fall within that range, especially in more recent cases"); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011) ("courts nationwide have repeatedly awarded fees of 30 percent or higher in so-called 'megafund' settlements") (collecting cases).

lodestar cross-check may serve some utility in cases at the fringes, routine recourse to it threatens to swallow the benefits that the percentage-of-the-fund method provides . . . .” *NCAA I*, 2017 WL 6040065, at *10.

The utility of a cross-check is significantly reduced here because the Court has closely supervised the litigation. *See Andrews*, 2022 WL 4453864, at *2 (finding a cross-check unnecessary in light of the “exceptional circumstances of this case and the Court’s extensive involvement in supervising” the litigation); *Senne v. Kansas City Royals Baseball Corp.*, 2023 WL 2699972, at *20 (N.D. Cal. Mar. 29, 2023) (granting 30% fee request and noting that “[a]rguably, a lodestar cross-check is not required here because the Court has been extensively involved in supervising this litigation and has observed first-hand the monumental efforts Class Counsel put into this case”). And many of the factors that weigh in favor of using the percentage-of-recovery method also weigh in favor of not applying a lodestar cross-check in this case, including that a substantial portion of the work performed by plaintiffs’ counsel in this MDL inured to the benefit of each plaintiff group (class, personal injury, and government entities). In short, “given the unique circumstances presented by this litigation, . . . a lodestar cross-check would not be a valuable tool to help assess the reasonableness of Class Counsel’s fee request.” *See Benson, LLC*, 2023 WL 3761929, at *3.

The Court nonetheless conducts a lodestar cross-check to generally assess the reasonableness of the fee award. A cross-check can be used to prevent “windfall profits to class counsel” that have little relation to the work performed. *Bluetooth*, 654 F.3d at 942. To guard against a windfall, the cross-check may be used to ensure that the multiplier on class counsel’s lodestar is not “extraordinarily high or low.” *Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at *16 (N.D. Cal. Dec. 8, 2021) (lowering a requested 6.24 multiplier to 5.47 after conducting a cross-check). The cross-check should confirm the reasonableness of the fee resulting from the percentage method, rather than recalculate the fee. But it should “not result in a second major litigation,” transform courts into “green-eyeshade accountants,” or seek to “achieve auditing

perfection," but should instead "do rough justice" to confirm an award's reasonableness. *See Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *14 (N.D. Cal. Dec. 18, 2018) (cleaned up).

The analysis when doing a cross-check thus does not need to be as exacting as when the primary means for calculating the fee is the lodestar method. *See Senne*, 2023 WL 2699972, at *20 (court "performed a rough calculation of Class Counsel's lodestar to evaluate whether the percentage-of-recovery method gives rise to a reasonable result"); *In re Apple iPhone/iPod Warranty Litigation*, 40 F. Supp. 3d 1176, 1181 (N.D. Cal. Apr. 14, 2014) ("plaintiffs' submission would be woefully insufficient" were it being used "to calculate a lodestar as the primary basis for the fee award," but it was sufficient to show that "applying a percentage-based fee recovery is within reason."); *Larsen*, 2014 WL 3404531, at *9 ("The lodestar cross-check calculation need entail neither mathematical precision nor bean counting.") (quotation omitted). A review of counsel's lodestar confirms that the requested fee award is reasonable and will not result in windfall profits.

Class Counsel presented several different ways of evaluating the lodestar. Considering all of plaintiffs' counsel's lodestar ($199,336,544.05) would result in a .38 multiplier. Dividing that time by three, in recognition of the fact that there are three primary plaintiff groups, leads to a 1.15 multiplier. Professor Robert Klonoff, whom courts have frequently relied on when assessing fee awards, takes that approach here as well. *Syngenta*, 357 F. Supp. 3d at 1112-15 (relying on Professor Klonoff's opinions).[4] Considering the lodestar just for six firms that were "class-centric" and focused on the class action aspects of the litigation ($26,328,149.75) leads to a 2.91 multiplier. Lastly, considering time spent in key common benefit categories (Factual Investigation, Discovery of Defendants, Document Review, Scientific Research, Fact Depositions, Class Certification, and Experts; $107,351,217.50) results in a .71 multiplier.

While none of these metrics precisely reflects the portion of Plaintiffs' counsel's lodestar that benefitted the class (and to what degree) given that work was done on a coordinated basis on

[4] Professor Klonoff also reduces the lodestar by the share of the JLI settlement relative to the combined amount of the JLI and Altria settlements. Doing so results in a 1.36 multiplier.

behalf of all three plaintiff groups, they all support the requested fee. Courts in the Ninth Circuit have frequently granted, and the Ninth Circuit has approved of, fee awards that result in similar and even greater multipliers, including in megafund cases where the fee award is above the 25% benchmark. *E.g. Vizcaino*, 290 F.3d at 1050 (affirming 28% fee and multiplier of 3.65); *Capacitors*, 2023 WL 2396782, at *2 (N.D. Cal. Mar. 3, 2023) (31% aggregate fee award, a 1.81 multiplier); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at *6, 10 (N.D. Cal. Aug. 3, 2016) (awarding a fee of 27.5% and a 1.96 multiplier).

For a lodestar cross-check to be meaningful, counsel must demonstrate that the lodestar reflects hours reasonably spent and reasonable hourly rates. *Bluetooth*, 654 F.3d at 941. Both criteria are readily met here. The hours spent were also reasonably incurred. Plaintiffs' counsel detailed the work they performed that inured to the benefit of all Plaintiffs, including class members. All time used to calculate the lodestar was periodically reviewed by the Common Benefit Special Master, the Hon. (Ret.) Judge Andler. Courts frequently rely on special masters to assess the reasonableness of class counsel's lodestar. *E.g.*, *In re Capacitors Antitrust Litig.*, 2020 WL 6544472, at *2 (N.D. Cal. Nov. 7, 2020) (court "adopt[ed] in full" the "determinations" of the special master). Judge Andler concluded that "the tasks, hours and expenses incurred were appropriate, fair and reasonable and for the common benefit." Sharp. Decl., Ex. 1 at 12.

The hourly rates used to calculate the lodestar are also reasonable, and the vast majority of the time billed fell into the following ranges: for over 97% of partner hours, rates range from $275 – $1,200; for over 96.5% of senior counsel hours, rates range from $475 – $1,000; for over 93.5% of associate hours, rates range from $175 – $800; for over 92.5% of contract or staff attorney hours, rates range from $100 – $500; and for over 88% of paralegal hours, rates range from $75 – $425. These rates are consistent with rates approved in complex litigations throughout this District. *In re MacBook Keyboard Litig.*, 2023 WL 3688452, at *15 (N.D. Cal. May 25, 2023) (approving partner rates up to $1,195, associate rates up to $850, $425 for contract attorneys, and $325 for paralegals); *Hefler*, 2018 WL 6619983, at *14 (approving partner rates up to $1,250, $650 for associates, and $350 for paralegals); *In re Volkswagen "Clean Diesel" Mktg., Sales*

Practices, & Prods. Liab. Litig., 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving rates of $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals). Capping the hourly rates that exceed the above ranges (*i.e.*, capping all partner rates at $1,200 and all paralegal rates at $425) has a minimal effect on the lodestar, reducing it by 1.19% (or $2,350,225.50). In sum, consideration of the time counsel spent at these hourly rates provides no reason to doubt the reasonableness of the requested fee award.

III. EXPENSES

"Class counsel is entitled to reimbursement of reasonable expenses." *Larsen*, 2014 WL 3404531, at *10 (citing Fed. R. Civ. P. 23(h)). Class Counsel requests the reimbursement of the out-of-pocket expenses of up to $4,100,000, and that they provide the precise amount of the requested expenses to be paid from the class Settlement Fund as part of the common benefit allocation process.

The Court finds that the payment of up to $4,100,000 from the JLI Class Settlement Fund would be reasonable in light of the expenses incurred by counsel, the size of the Settlement, and the relative proportion of the expenses that counsel expects to be borne by each plaintiff group. Co-Lead Counsel seek no more than $4,100,000 in litigation costs to be paid form the class Settlement Fund. Class Counsel estimates that the expenses incurred in the litigation that the class would have occurred had it litigated the case on its own and without the other plaintiff groups would likely have exceeded $10 million. According to Class Counsel's estimates, costs related to experts who provided opinions in connection with class certification (and who later prepared merits reports)—Dr. Singer, Professor Chandler, Dr. Pratkanis, and Dr. Emery—were approximately $2,050,000. Costs related to document hosting exceeded $1,450,000. And costs associated with deposition transcripts and related materials exceeded $800,000. *Id.* Thus, the class would have incurred costs exceeding the requested $4,100,000 cap based solely on a portion of the total case costs, *i.e.* those associated with document hosting, depositions, and a subset of the experts who were central to the class claims. The requested expense reimbursement from the class Settlement Fund is therefore significantly lower than it otherwise would be absent the involvement

of other plaintiff groups. In other words, the class substantially benefits from the involvement of other plaintiff groups by spreading litigation costs among the various types of Plaintiffs.[5]

Lastly, with respect to whether the expenses were reasonably incurred for the common benefit, Judge Andler has concluded that they were. *E.g.*, Sharp. Decl., Ex. 1 at 12 (finding that the expenses were "appropriate, fair and reasonable and for the common benefit"). By far the largest cost in this litigation related to experts, which is appropriate given the wide range of topics that Plaintiffs—and Class Plaintiffs specifically—would need to have addressed at summary judgment and trial. The litigation also involved a large number of fact and expert depositions, and costs related to those depositions (*i.e.*, court reporting service) were reasonably incurred.

IV. SERVICE AWARDS

The Ninth Circuit has held "that reasonable incentive awards to class representatives are permitted." *Apple Device*, 50 F.4th at 785 (quotation marks and citation omitted). In so doing, the Court explained that nineteenth century caselaw, which established the "common fund doctrine," is "not[] discordant" with the Ninth Circuit's "twenty-first century precedent allowing [service] awards." *Id.* Instead, in the class action context, the common fund doctrine "supports reasonable awards to a litigant." *Id.* at 785-86 (quotation marks and citation omitted). And "private plaintiffs who recover a common fund are entitled to an *extra* reward," so long as it is reasonable. *Id.* (emphasis in original; quotation marks and citation omitted). "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; [and] (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" *Andrews*, 2022 WL 4453864, at *4–5 (quoting *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

[5] Applying another metric confirms the reasonableness of the class expense figure. The $4.1 million cap for the class is also less than a 2% cost assessment on the Settlement Fund (or $5.1 million), which is the common benefit cost assessment paid by other Plaintiffs in the litigation. *See* ECF 586 at 11.

Class Plaintiffs seek service awards for each of the 86 class representatives ranging from $5,000 to $33,000,[6] depending on each class representative's involvement in the case, totaling $774,600.[7] Given the intrusive and high-profile nature of this litigation, a $5,000 service award—which, in this Circuit, is "presumptively reasonable"—is an appropriate baseline. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) ("In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable service award.").

All 86 class representatives merit a service award. *See Van Vranken*, 901 F. Supp. at 299. By participating in this lawsuit, all 86 class representatives encountered notoriety and personal difficulties. They participated in Court-ordered discovery and completed a highly intrusive forensic collection of their documents, including cell phones and social media accounts. This case has also garnered significant media attention, which increased the burdens on class representatives. *See Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *10 (C.D. Cal. Sept. 18, 2020) (granting $25,000 service awards where case had attracted media attention).

Class Plaintiffs seek awards above the presumptively reasonable baseline of $5,000 only where the class representative spent additional time and effort, and faced greater notoriety and personal difficulties, as a result of their involvement. *See Van Vranken*, 901 F. Supp. at 299. The class representatives for whom Class Plaintiffs request more than $10,000 were deposed at length (including, in many instances, on sensitive topics, such as the class representative's medical history and history of drug use) and participated in multi-hour preparation. These additional time-consuming and intrusive responsibilities warrant the larger service awards requested. *See, e.g.*, *Andrews*, 2022 WL 4453864, at *5 (approving $15,000 service award for each class representative, where each had "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"); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17

[6] Appendix A to the Sharp Declaration included a chart showing, for each class representative, the proposed service award amount and the bases for that amount.

[7] The notice provided to class members stated that Class Plaintiffs would apply for service awards not to exceed $1 million in total. The request here is considerably lower.

(N.D. Cal. Apr. 22, 2010) (finding service award of $20,000 "well justified" where, at her deposition, plaintiff "was subjected to questioning regarding her personal financial affairs and other sensitive subjects").

The five class representatives on whose behalf Class Plaintiffs seek service awards of $25,000 or more served as class bellwether plaintiffs and, therefore, in addition to the responsibilities described above, they each also: responded to additional interrogatories, including on sensitive topics such as past drug use; produced documents; worked with counsel to authorize the production of their medical records from their medical providers; participated in the class certification process by reviewing the adequacy arguments made against them; and conferred with counsel regarding their ability and willingness to go to trial. These five bellwether plaintiffs "demonstrated a strong commitment to the class" that warrants the service awards they now seek. *Garner*, 2010 WL 1687832, at *17, n.8; *see also NCAA*, 2017 WL 6040065, at *11 (awarding $20,000 to each of four class representatives who "spent a significant amount of time assisting in the litigation of th[e] case, in preparing for and having their depositions taken, in searching for and producing documents that spanned many years, and in conferring with counsel throughout the litigation"). The two highest requested awards (for plaintiffs Colgate and DiGiacinto) are sought for plaintiffs whose friends and family were deposed and subject to motion practice, which then-Magistrate Judge Jacqueline Scott Corley recognized was "not the norm in a putative consumer class action." ECF 2173.

The requested service awards are also reasonable in the aggregate. The total service awards requested here represent only 0.3% of the total settlement amount. Courts within the Ninth Circuit have repeatedly found awards constituting such a small share of a settlement fund to be reasonable. *E.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (approving service awards that constituted 0.56% of settlement); *Rabin v. PricewaterhouseCoopers LLP*, 2021 WL 837626, at *10 (N.D. Cal. Feb. 4, 2021) (approving $20,000 service awards where "the aggregate proposed incentive award for the two named plaintiffs is 0.34% of the Gross Fund").

In sum, the service awards that Class Plaintiffs seek on behalf of the 86 class representatives are reasonable and in line with those routinely approved by courts within this District. Class Plaintiffs' request should be approved.

V. CONCLUSION.

For the reasons set forth above, the Court grants Class Counsel's motion and the following awards:

- Attorneys' fees in the amount of 30% of the Settlement Fund ($76,500,000.00), plus a proportionate amount of accrued interest;
- Expenses of up to $4,100,000. The final amount of expenses to be requested from the class fund will be determined in connection with the forthcoming motion to allocate the common benefit expense fund, as discussed above; and
- Service awards to each of the proposed Settlement Class Representatives, ranging from $5,000 to $33,000 per plaintiff and totaling $774,600.00.

IT IS SO ORDERED.

Dated: _____

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Honorable Judge William H. Orrick