UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Shirley Waldbuesser, et al.,
Plaintiff,
v.
Northrop Grumman Corp., et al.,
Defendants.

Case No. CV 06-6213-AB (JCx)

~~[PROPOSED]~~ ORDER GRANTING MOTION FOR ATTORNEY FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS

I. Introduction

Pending before the Court are Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorney Fees, Reimbursement of Expenses, and Incentive Awards. (Dkt. Nos. 797, 783.) The Court heard oral argument on these motions on October 23, 2017. The Court will enter an Order approving the settlement. This separate Order addresses the attorney fees request, reimbursement of expenses, and the lead Plaintiffs' incentive fees.

II. BACKGROUND

This settlement agreement marks the end of a protracted, eleven-year battle between the litigants. The parties are familiar with the background of this case, and thus the Court confines its discussion to the facts relevant to the instant Motion for

Attorney Fees, Reimbursement of Expenses, and Incentive Awards.

The settlement provides a $16.75 million recovery fund for the approximately 210,000 current and former participants in the Northrop Grumman Savings Plan and Financial Security and Savings Program. (*See* Dkt. No. 766 at 1.) Class counsel, Schlichter, Bogard & Denton LLP ("SBD"), seek attorney fees of $5,583,333, one-third of the settlement fund. (Dkt. No. 783-1 ("Mot.") at 1.) SBD also seeks $1,159,114 in reimbursement for expenses incurred over the course of this action. (*Id.*) Lastly, SBD requests that the class representatives—Gary Grabek, Julie Spicer, Mark Geuder, and Dwite Russell—each receive $25,000 as an incentive award.

III. LEGAL STANDARD

It has long been recognized that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air West. Inc.*, 557 F.2d 759, 769 (9th Cir.1977). In *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir.1989), the Ninth Circuit explained the equitable principle underlying such fee awards:

> Since the Supreme Court's 1885 decision in *Central Railroad & Banking Co. of Ga. v. Pettus*, 113 U.S. 116, 5 S. Ct. 387, 28 L. Ed. 915 (1885), it is well settled that the lawyer who creates a common fund is allowed an *extra* reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit . . . . The amount of such a reward is that which is deemed "reasonable" under the circumstances.

(citations omitted). The purpose of this "common fund" doctrine is to avoid unjust enrichment, requiring "those who benefit from the creation of the fund [to] share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (*"WPPSS"*), 19 F.3d 1291, 1300 (9th Cir. 1994).

"In a common fund case, the district court has discretion to apply either the lodestar method or the percentage-of-the-fund method in calculating a fee award." *Fischel v. Equitable Life Assurance Soc'y of the United States*, 307 F.3d 997, 1006 (9th Cir. 2002). "Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion." *Id.* at 1007. Thus, although the Ninth Circuit has "established 25% of the common fund as the 'benchmark' award for attorney fees[,]" *Torrisi v. Tucson Electric Power Co.*, 8 F.3d 1370, 1376 (9th Cir.1993), "that rate may be unreasonable in some cases." *Fischel*, 307 F.3d at 997.

Ultimately, the "benchmark percentage should be adjusted, or replaced by a lodestar calculation, 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." *Torrisi*, 8 F.3d at 1376 (citing *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990)).

The factors that inform whether the benchmark percentage should be adjusted include: (1) the result obtained for the class; (2) the effort expended by counsel; (3) counsel's experience; (4) the skill of counsel; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel's lodestar. *See, e.g.*, *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973-74 (N.D. Cal. 2001); *In re Med. X-Ray Antitrust Litig*., No. CV-93-5904, 1998 WL 661515, at *7 (E.D.N.Y. Aug. 7, 1998); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320, 326 (E.D.N.Y. 1993); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 147 (E.D. Pa. 2000).

IV. DISCUSSION

Having considered the papers submitted in support of the motion, and for good cause having been shown, the Court grants Plaintiffs' Motion.

A. Attorney Fees

a. The Result Obtained for the Class

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client").

The Court finds that the $16.75 million settlement fund obtained by SBD is an exceptional result. The settlement fund represents about 70% of the class' approximately $24 million total net loss.[1] After deducting the amount Class Counsel requests in fees, the settlement fund still represents around 40% of the class' net loss. Further, this amount is only slightly less than Defendants' claimed $10.5 million maximum exposure. (*See* Declaration of Jerome J. Schlichter ("Schlichter Decl.") ¶ 18.)

The Court notes that the settlement fund, as a percentage of recovery, is greater than recoveries obtained in other cases where courts have awarded attorney fees of one-third of a common fund. *See, e.g.*, *Med. X-Ray*, 1998 WL 661515, at *7-8 (court increased 25% benchmark to 33.3% where counsel recovered 17% of damages); *Crazy Eddie*, 824 F. Supp. at 326 (court increased 25% benchmark to 33.8% where counsel recovered 10% of damages); *In re Gen. Instr. Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001)(one-third fee awarded from $48 million settlement fund that was 11% of the plaintiffs' estimated damages); *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 489-90, 498 (E.D. Pa. 2003) (one-third fee awarded from settlement

[1] At the hearing, Defense counsel argued that this number was inaccurate and that Plaintiffs' damages should be updated as of the date of judgment. Plaintiffs do not provide this calculation for the Court. However, Defense counsel's figure of $50.6 million does not change the Court's substantive analysis. Even applying this figure, the percentages of recovery are still comparable to those in other courts that have awarded attorney fees of 1/3 of the settlement fund.

fund that comprised about 15% of damages); *Cullen*, 197 F.R.D. at 148 (one-third awarded in fees from settlement of class consisting of defrauded vocational students that was 17% of the tuition the class members paid).

Accordingly, the Court concludes that the exceptional result achieved in this action justifies an attorney fee award of one-third of the settlement fund.

b. The Effort Expended by SBD

The Court finds that class counsel expended significant effort on behalf of the class in prosecuting this action. SBD devoted over 26,000 hours of attorney, paralegal, and law clerk time over the approximately eleven years the action has been pending.

Several courts have awarded attorney fees of one-third of a common fund under similar circumstances. *See Crazy Eddie*, 824 F. Supp. at 325 (the court justified its award of attorney's fees in the amount of one-third of the settlement in part due to the expenditure by eleven law firms of about 30,000 hours of attorney and paralegal time litigating the case); *see also Med. X-Ray*, 1998 WL 661515, at *7 (the court awarded fees in the amount of one-third of the common fund after seventeen law firms spent about 30,000 hours litigating the case). In fact, courts have awarded fees of one-third of a settlement fund when considerably less hours were spent on the litigation than those spent here. *See Cullen*, 197 F.R.D. at 150 (the court awarded fees of one-third of the settlement fund after counsel spent 3,900 hours on the litigation over two years, noting, "[t]he time class counsel devoted to this case represents a substantial commitment to this litigation"); *Corel,* 293 F. Supp. 2d at 496-97 (awarding one-third of settlement fund in attorneys' fees for 6,800 hours spent litigating the case); *In re Ravisent Tech. Sec. Litig*., No. Civ.A.00-Civ-1014, 2005 WL 906361, at *11 (E.D. Pa. April 18, 2005) (awarding one-third of common fund in attorneys' fees for 1,724.9 hours spent litigating the case).

SBD effort is also demonstrated by the fact that this action was actively

litigated. During this litigation, SBD drafted and filed three detailed complaints. Prior to filing the complaints, SBD spent over a year researching the complex area of law and the issues relating to retirement plans. (Schlichter Decl. ¶ 14.) SBD also successfully appealed the Court's denial of its motion for class certification to the Ninth Circuit, after which it obtained class certification on remand. (*See* Dkt. No. 421.) SBD reviewed millions of pages of documents, took seventeen depositions, and prevailed on the tried claims at the summary judgment stage. (*See* Declaration of Stephen M. Hoeplinger ("Hoeplinger Decl.") ¶ 9.) SBD also participated in three unsuccessful mediations, after which it proceeded to prepare for trial. (*See* Dkt. No. 748; Hoeplinger Decl. ¶ 11.) Trial had already begun by the time the agreement was reached. (Hoeplinger Decl. ¶ 14.)

Accordingly, because SBD exerted great effort on behalf of the class in litigating this action, the Court concludes an award of one-third of the settlement fund in attorney fees is justified.

c. The Experience of SBD

The experience of counsel is also a factor in determining the appropriate fee award. In *Krueger v. Ameriprise Financial, Inc.*, No. 11-CV-02781 (SRN/JSM), 2015 WL 4246879, at *5-6 (D. Minn. July 13, 2015), the court justified its fee award of one-third of a common fund based in part on the experience of counsel in litigating ERISA class actions. *See also In re Pub. Serv. Co.*, No. 91-0536M, 1992 WL 278452, at *8 (S.D. Cal. July 28, 1992) (experience in complex class actions weighed in favor of fee award of one-third of common fund).

The Court finds that SBD is highly experienced in representing plaintiffs in class action litigation, particularly ERISA class actions. *See, e.g*, *Tussey v. ABB, Inc.*, No. 06-04305-CV-C-NKL, 2012 U.S. Dist. LEXIS 157428, at *10 (W.D. Mo. Nov. 2, 2012) (referring to SBD as an expert in ERISA litigation); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *7-9, 16 (C.D. Ill. Oct. 15, 2013) (noting

1 that SBD is the "preeminent firm in 401(k) fee litigation"). SBD has been
2 investigating and preparing 401(k) fiduciary breach cases for over ten years, was the
3 first firm to bring a 401(k) ERISA fiduciary breach case, and has been named class
4 counsel in numerous similar cases. (Schlichter Decl. ¶ 4, 14, 16.) *See Spano v.*
5 *Boeing*, No. 3:06-cv-00743-NJR-DGW, 2015 U.S. Dist. LEXIS 179799 (S.D. Ill.
6 Mar. 31, 2016). Further, SBD successfully petitioned the United States Supreme
7 Court to hear its first ERISA fiduciary breach case regarding excessive fees, and
8 obtained 9-0 decision favorably interpreting ERISA's statute of limitation. (Shlichter
9 Decl. ¶ 11.) *See Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015). SBD has prevailed in
10 both of the two 401(k) fiduciary breach cases that have gone to judgment after trial.
11 *See id.*; *Tussey*, 2012 U.S. Dist. Lexis 157428. Other courts have also noted that
12 through its work, SBD has contributed significantly to lowering 401(k) record keeping
13 fees across the country. *See Nolte*, 2013 U.S. Dist. LEXIS 184622, at *5-6.
14 Accordingly, the Court concludes that SBD's unique experience representing
15 plaintiffs in ERISA class actions justifies an award of one-third of the settlement fund
16 in attorney fees.
17 **d. The Skill of SBD and Complexity of the Case**
18 The "prosecution and management of a complex national class action requires
19 unique legal skills and abilities." *Edmonds v. U.S.*, 658 F. Supp. 1126, 1137 (D.S.C.
20 1987). "The single clearest factor reflecting the quality of class counsels' services to
21 the class are the results obtained." *Cullen*, 197 F.R.D. at 149 (alterations and
22 quotations omitted); *see also Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534,
23 547-548 (S.D. Fla. 1988).
24 ERISA 401(k) fiduciary breach class actions involve complex questions of law
25 and have not been widely litigated to this point. *See Martin v. Caterpillar Inc.*, No.
26 07-1009, 2010 U.S. Dist. LEXIS 145111, at *7 (C.D. Ill. Sept. 10, 2010) (noting that
27 this type of litigation is "unique with limited case authority in support"). This action
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involved prohibited transactions under 29 U.S.C. § 1106, "for which there are few reported cases at all and no reported cases directly on point." (Mot. at 18.) Given the novel and complex nature of this area of law, the Court finds SBD's unique experience and knowledge resulted in skillful prosecution this action and therefore concludes that a fee award of one-third of the settlement fund is justified.

e. The Risks Assumed by SBD

The risks assumed by SBD, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award. *See, e.g.*, *WPPSS*, 19 F.3d at 1300; *Med. X-Ray*, 1998 WL 661515, at *7 (justifying fee award in part because counsel spent several years litigating the matter without certainty of compensation); *Crazy Eddie*, 824 F. Supp. at 326 (same; further noting that counsel could not at the outset of the litigation predict success); *In re Pub. Serv. Co*, 1992 WL 278452, at *8, 10.

The Court finds that SBD assumed great risk in litigating this action. SBD represented plaintiffs on a completely contingent basis, forwarding all expenses incurred. There was no guarantee that any amounts would be recovered and thus considerable risk that counsel would not be compensated for the time it expended nor reimbursed for the expenses it incurred. This risk assumed by SBD is demonstrated by the fact that settlements were not easily achieved. For example, settlement did not occur simply upon the filing of the lawsuit, or upon the fact that some of plaintiffs' claims survived summary judgment. Rather, settlement occurred over ten years from the date the case was filed after extensive litigation and the start of trial.

Accordingly, the Court concludes that the risk assumed by SBD justifies an award of one-third of the settlement fund in attorney fees.

f. The Reaction of the Class

The presence or absence of objections from the class is also a factor in determining the proper fee award. *See Cullen*, 197 F.R.D. at 148-49; *Crazy Eddie*,

824 F. Supp. at 327. Here, the Court approved notice was mailed to approximately 210,000 class members and the settlement made available for download via a website created by SBD. (Hoeplinger Decl. ¶¶ 17, 18.) The notice set forth that counsel would seek up to one-third of the settlement fund in attorney fees. (*Id.*) The notice also informed class members of their right to object to counsel's fee request or to opt-out of the class and individually pursue their own claims, and the dates to do so. (*Id.* ¶ 17.)

The Court finds that notice to the class was adequate. The Court also notes that SBD has been in contact with 300 class members since the notice was mailed, and only four formal objections to the settlement have been filed with the Court. (*See* Dkt. No. 799 at 2.) Of the four, only two people objected to SBD's request for attorney fees. (*Id.* ¶ 4-5.) The objections to the attorney fees generally complain that the amount SBD will receive in fees is large in comparison to the amount each class member will receive. (*See id.*; *see also* Dkt. No. 800 at Ex. 7, 8.) Although true, the objectors provide no support for their arguments that SBD should receive a lesser amount in fees. Given the Court's analysis here, and specifically considering the lodestar calculation described below, the amount requested by SBD is reasonable.

The Court further finds that number of objections to the request for attorney fees is remarkably small given the wide dissemination of notice. Accordingly, the Court concludes that the lack of significant objections to the requested fees justifies an award of one-third of the settlement fund.

g. Comparison With SBD's Lodestar

Courts often compare an attorney's lodestar with a fee request made under the percentage of the fund method as a "cross-check" on the reasonableness of the requested fee. *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002); *Fischel*, 307 F.3d at 1007. "[T]he lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted [and] may provide

a useful perspective on the reasonableness of a given percentage award." *Vizcaino*, 290 F.3d at 1050. However, a Court is not required to conduct a lodestar "cross-check." *Fischel,* 307 F.3d at 1007 ("Courts *may compare* the two methods of calculating attorney's fees in determining whether fees are reasonable.") (emphasis added); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1305 (W.D. Wash. 2001) ("[I]n making the decision of reasonableness of attorneys fees, the court in a common fund case has discretion to use either the lodestar method or the percentage method.") (citation omitted).

SBD suggests the blended rate for attorney and paralegal time of $514.60, the rate approved by the court in *Tussey* in 2014. *See Tussey*, 746 F.3d at 340-41. The Court finds that this blended rate for attorney and paralegal time is reasonable given recently awarded rates.[2] *See Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174, at *9, 13 (S.D. Ill. Nov. 22, 2010) (blended rate of $514.60 per hour to calculate lodestar); *Krueger*, 2015 WL 4246879, at *8-9 (applying blended rate of $514.60 based on *Tussey*). Applying this rate, SBD calculates the lodestar figure in this case is approximately $12,092,070 for attorney hours alone. (Mot. at 21.)

The Court notes that had SBD sought to recover its fees under the lodestar approach, its fee request under that method would have been presumptively reasonable. *Fischel*, 307 F.3d at 1007. In addition, under the percentage of the fund method, courts have awarded attorney fees of one-third of a common fund even when counsel's lodestar was *less* than the fee award. *See, e.g.*, *Crazy Eddie*, 824 F. Supp. at 326-27 (counsel's lodestar was $8.3 million; less than the fee award of $14.2 million); *Med. X-Ray*, 1998 WL 661515, at *7 (counsel awarded fees of $13.1 million when their lodestar was $7.9 million).

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[2] SBD notes that since *Tussey*, courts have awarded it higher hourly rates, resulting in a higher blended rate. (Mot. at 22.) For example, last year three courts approved rates of $998 for attorneys with at least 25 years of experience, $850 for attorneys with 15-25 years of experience, $612 for attorneys with 5-14 years of experience, $460 for attorneys with 2-4 years of experience, and $309 for paralegals and clerks.

Moreover, in class action cases, the lodestar figure is often multiplied to reflect a variety of factors such as the effort expended by counsel, the complexity of the case, and the risks assumed by counsel. *See Vizcaino*, 290 F.3d at 1051 ("Indeed, courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases."); *Vizcaino*, 142 F. Supp. 2d at 1306. The Court finds that factors justifying application of a multiplier to SBD's lodestar are present here. As set forth above, SBD expended substantial effort on behalf of the class in an unusually complex and difficult case to prosecute. In addition, SBD assumed great risk of non-payment litigating this action on a contingency basis, while at the same time forwarding all the costs of litigation.

In careful consideration of all of the above factors, this Court finds one-third (33 1/3 %) of the settlement fund of $16,750,000.00 to be a reasonable percentage award. As such this Court awards attorney fees totaling $5,583,333.

B. Reimbursement for SBD's Expenses

The Court must also determine an appropriate award of costs and expenses. *See* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement."); *Trans Container Servs. v. Security Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985). In making a determination, the court must examine prevailing rates and practices in the legal marketplace to assess the reasonableness of the costs sought. *Missouri v. Jenkins*, 491 U.S. 274, 286-87 (1989). "Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable." *Rutti v. Lojack Corp., Inc.,* No. SACV 06–350 DOC (JCx), 2012 WL 3151077, *12 (C.D. Cal. July 31, 2012). Courts also have discretion to reimburse consulting and expert witness fees. *In re Media Vision Tech. Secs. Litig.*, 913 F. Supp. 1362, 1366-67 (N.D. Cal. 1996).

SBD seeks $1,159,114 in reimbursement of expenses. (Mot. at 25.) The costs include: (1) $49,026.96 for depositions, (2) $278,764.59 for experts and consultants, (3) $9,279.13 for filing, transcripts, subpoena services, and related costs, (4) $27,986.06 for mediation and settlement costs, (5) $274,958.34 for copies, postage, phone, and fax, (6) $330,152.05 for data development and document organization, (7) $22,667 for research and investigation, (8) $160,262.06 for travel, lodging, and parking, and (9) $ 6,018.05 in trial costs. (O'Gorman Decl. ¶ 2.)

During the course of this action, SBD reviewed over 2.5 million pages of documents and took seventeen depositions. (Hoeplinger Decl. ¶ 9.) The parties also attempted mediation three times prior to trial. (*Id.* ¶ 11.) Since the mediations were unsuccessful, SBD prepared for trial and spent a week conducting its case-in-chief prior to settlement. (*Id.* ¶ 13.) SBD continued settlement efforts during trial, and it continued to neogitate details of the settlement for two months following the initial agreement. (*Id.* ¶¶ 14-15.) Accordingly, given that the expenses sought are the type of costs typically recovered in similar cases, and noting SBD's efforts and the protracted nature of this case, the Court finds this request reasonable.

C. The Named Plaintiffs' Incentive Awards

SBD requests that each of the named Plaintiffs—Gary Grabek, Julie Spicer, Mark Geuder, and Dwite Russell—receive an inventive award of $25,000. (Mot. at 26-27.) Relevant considerations in determining whether to grant an incentive award to named plaintiffs include "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *see In re United States Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (citing *Cook*, 142 F.3d at 1016).

It is well-established that the court may grant a modest incentive award to class representatives, both as an inducement to participate in the suit and as compensation

for time spent in litigation activities, including depositions. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (holding that the district court did not abuse its discretion in awarding an incentive award to the class representatives); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992) (stating that an incentive award in such amount "as may be necessary to induce [the class representative] to participate in the suit" is appropriate).

Whether to authorize an incentive payment to a class representative is a matter within the court's discretion. The criteria courts consider in determining whether to approve an incentive award include: "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." *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

1. Risk to Class Representatives

Here, SBD argues that the named class representatives "undertook a substantial risk of having to pay Defendants' costs if this case failed." (*See* Mot. at 27.) This statement is rather uninformative and conclusory. However, given that Defendants' costs could be staggering[3], this factor weighs slightly in favor of granting the incentive awards.

2. The Notoriety and Personal Difficulties Encountered by the Class Representatives

This factor generally considers whether the Plaintiffs have been subjected to media attention as a result of their involvement in the case. The fact that there was no

[3] Here, SBD seeks over one million dollars in costs. Given that Defendants' were also active participants in this litigation, their number is likely similar.

1 media attention, however, does not preclude approval of an incentive payment. *See*
2 *Razilov v. Nationwide Mut. Ins. Co.*, No. 01–CV–1466–BR, 2006 WL 3312024, at *4
3 (D. Or. Nov. 13, 2006) (approving an incentive award of $10,000 despite a lack of
4 notoriety or demonstration of personal difficulties). As no significant media attention
5 or other difficulties have been identified, however, this factor weighs against
6 authorizing a large incentive payment.

7 **3. The Amount of Time and Effort Expended by the Class**
8 **Representatives**

9 An incentive award is appropriate where the "class representatives remained
10 fully involved and expended considerable time and energy during the course of the
11 litigation." *Razilov*, 2006 WL 3312024, at*4. SBD argues that the named Plaintiffs
12 came forward to initiate this action, have been active participants in the litigation, and
13 spent a significant amount of time to benefit the class. (*Id.*) All of the named
14 Plaintiffs "responded to document requests and interrogatories, reviewed and
15 approved pleadings, and assisted with discovering, including sitting for depositions."
16 (*Id.*) Three of the named Plaintiffs, Gary Grabek, Julie Spicer, Mark Geuder, traveled
17 from their homes in the Midwest to Los Angeles for trial in order to help protect the
18 interests of the other class members. (*Id.*) Mr. Grabek also attended mediation
19 sessions in California and New York. (*Id.*) Given their involvement in this prolonged
20 litigation, the Court finds this factor weighs in favor of awarding incentives.

21 **4. The Duration of the Litigation**

22 When litigation has been protracted, an incentive award is especially
23 appropriate. *See Van Vranken,* 901 F. Supp. at 299 (finding that a class
24 representative's participation through "years of litigation" supported an incentive
25 award). As noted, this case has been pending for almost eleven years. Given the
26 length of the litigation and Plaintiffs' continued involvement throughout the course of
27 the action, the Court concludes that this factor also favors an incentive award.
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5. The Personal Benefit Enjoyed by the Class Representatives as a Result of the Litigation

An incentive award may be appropriate when a class representatives will not gain any benefit beyond that they would receive as an ordinary class member. *See Razilov*, 2006 WL 3312024, at *4 (approving the payment of an incentive award where the only benefit a class representative was going to receive from a settlement was the same statutory damages other class members would receive); *Van Vranken*, 901 F. Supp. at 299 (where a class representative's claim made up "only a tiny fraction of the common fund," a substantial incentive award was appropriate). The named Plaintiffs in this action will receive no relief beyond that available to members of the class in general; absent an incentive award, they will each be eligible to submit a claim through the process described in the settlement agreement. Further, the incentive award requested by SBD makes up only .15% of the total settlement fund per Plaintiff, and only .60% of the total fund when combined. (Mot. at 27.) Courts in this district have approved similar awards. *See Ingalls v. Hallmark Retail, Inc.*, No. CV 08–4342–VBF(Ex), 2009 U.S. Dist. LEXIS 131078, at *6 (C.D. Cal. Oct. 16, 2009) (approving an incentive award of 1.06% of the settlement fund—$10,000 to each of six named plaintiffs from a fund of $5,625,000); *Trujilo v. City of Ontario*, 2009 U.S. Dist. LEXIS 79309, at *12-13 (C.D. Cal. Aug. 24, 2009) (approving incentive awards of $30,000 each to six named Plaintiffs from a $2.75 million fund). Accordingly, this factor also favors approval of an incentive award.

6. Weighing the Factors

Considering all the relevant factors, the Court concludes that an incentive award of $25,000 each for Gary Grabek, Julie Spicer, Mark Geuder, and Dwite Russell is reasonable under the circumstances.

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V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for Attorney Fees, Reimbursement of Expenses, and Incentive Awards. It awards SBD $5,583,333 in attorney fees and $1,159,114 in expenses, and each named Plaintiff an incentive award of $25,000.

IT IS SO ORDERED.

Dated: October 24, 2017

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT COURT JUDGE