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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IRAM BAKHTIAR,
Plaintiff,
v.
INFORMATION RESOURCES, INC.,
Defendant.

Case No. 17-cv-04559-JST

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF AMENDED
CLASS ACTION SETTLEMENT AND
MOTION FOR ATTORNEYS’ FEES,
COSTS, AND SERVICE AWARD**

Re: ECF Nos. 143, 144

Before the Court are Plaintiff Iram Bakhtiar’s motions for final approval of an amended class action settlement and for attorneys’ fees, costs, and a service award. The Court will grant the motions.

I. BACKGROUND

A. The parties and claims

This wage-and-hour action arises out of the alleged misclassification by Defendant Information Resources, Inc. (“IRI”) of certain of its employees as exempt from federal and state overtime laws.

IRI is a market research company that offers business intelligence and analysis. Plaintiff Bakhtiar alleges that IRI employees in certain non-management positions (collectively, “Client Service Managers”) were misclassified by IRI as exempt. Bakhtiar alleges that Client Service Managers are, in fact, non-exempt employees, because they perform basic client service and clerical tasks, namely “tasks without significant discretion, independence, or technical training or knowledge,” ECF No. 108 at 11, and do not manage client accounts or advise clients concerning business strategy. Bakhtiar alleges that, as a result of this alleged misclassification, IRI

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1 improperly denied Client Service Managers overtime wages, meal and rest periods, reimbursement
2 of business expenses, and accurate itemized wage statements.

3 In the operative complaint, ECF No. 13, Bakhtiar asserts eight claims against IRI: (1)
4 failure to pay overtime wages in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
5 § 207; (2) failure to pay overtime wages in violation of California Labor Code §§ 510 and 1194;
6 (3) failure to provide meal and rest periods in violation of California Labor Code §§ 226.7 and
7 512; (4) failure to provide accurate itemized wage statements in violation of California Labor
8 Code § 226; (5) failure to pay wages upon discharge in violation of, and waiting penalties under,
9 California Labor Code §§ 201-204; (6) failure to reimburse business expenses in violation of
10 California Labor Code § 2802; (7) violations of the Unfair Competition Law (“UCL”), California
11 Business and Professions Code § 17200; and (8) a claim for civil penalties under the Private
12 Attorney General Act of 2004 (“PAGA”), California Labor Code § 2698.

13 Bakhtiar asserts these claims on her own behalf and on behalf of proposed classes under
14 Rule 23 and a collective action under the FLSA.

15 **Proposed California Class:** All persons who are or have been
16 employed by IRI as Client Service Managers including Client
17 Solutions Managers, Client Service Consultants, Client Service
18 Analysts, and other similar, non-management positions, within the
State of California at any time from four years prior to the filing of
the initial Complaint through the final disposition of this case.

19 **Proposed California Penalties Subclass:** All California Class
20 Members who are or have been employed by IRI at any time
within the year prior to the filing of the initial Complaint through
the final disposition of this case.

21 **Proposed California Waiting Time Penalties Subclass:** All
22 California Class Members who no longer work for IRI and have
23 not worked for IRI for more than 72 hours within three years prior
to the filing of the initial Complaint through the final disposition of
this case.

24 **Collective Class:** All persons who are or have been employed by
25 IRI as Client Service Managers including Client Solutions
26 Managers, Client Service Consultants, Client Service Analysts, and
27 other similar, non-management positions, within the United States
at any time from three years prior to the filing of the initial
Complaint through the final disposition of this case.

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B. Procedural history

1 **B. Procedural history**
2 Bakhtiar filed the first iteration of the complaint on August 9, 2017, ECF No. 1, and filed
3 the operative complaint on October 13, 2017, ECF No. 13. Prior to filing the operative complaint,
4 on August 9, 2017, Bakhtiar provided notice to the Labor and Workforce Development Agency
5 (“LWDA”) regarding her intention to commence an action under PAGA. ECF No. 13-2 at 2. IRI
6 filed an answer to the operative complaint on October 27, 2017. ECF No. 16. On February 22,
7 2018, the Court denied IRI’s motion to transfer this action to the Northern District of Illinois.
8 ECF No. 38.

9 On July 26, 2018, the Court granted in part and denied in part Bakhtiar’s motion for
10 conditional certification under the FLSA. ECF No. 61. The Court granted conditional
11 certification of the Collective Class described above. *Id.* The Court also approved Bakhtiar’s
12 proposed notice to the Collective Class, with a few modifications. *Id.* Other than the Collective
13 Class, none of the classes described in the operative complaint have been certified.

14 After conducting discovery, Bakhtiar and ISI engaged in two mediation sessions before
15 they entered into a settlement agreement. ECF No. 108-1 at 2-3.

16 In its order of January 30, 2020, the Court identified a number of deficiencies that
17 precluded it from determining that the settlement fell within the range of approval, and it also
18 noted that the proposed notices required corrections. *See* ECF No. 119 at 12-24. The parties
19 amended the settlement agreement on March 16, 2020. ECF No. 121-2.

20 On August 4, 2020, the Court granted preliminary approval of the amended settlement
21 agreement, but it required Bakhtiar to make further revisions to the proposed notices. ECF No.
22 131. On October 8, 2020, the Court approved the revised proposed notices and authorized the
23 dissemination of the same to the members of the settlement classes, and it set the final fairness
24 hearing for February 10, 2021. ECF No. 139.

25 The settlement administrator, Rust Consulting, Inc., mailed notices to the members of the
26 settlement classes on October 28, 2020. ECF No. 144-6 ¶ 10.

27 On January 6, 2021, Bakhtiar moved for final approval of the amended settlement
28 agreement, and for an award of attorneys’ fees, costs, and a service award. ECF Nos. 143, 144.

1 No objections have been filed, and only one out of 129 members of the settlement classes opted
2 out. ECF No. 144-6 ¶¶ 15-17. The Court held a final fairness hearing on February 10, 2021.

3 **C. Terms of the amended settlement agreement**

4 The amended settlement agreement, ECF No. 121-2, requires ISI to pay a Total Settlement
5 Amount of \$2,250,000. Out of this amount, the following amounts will be deducted before the
6 Net Distribution Fund will be distributed to the members of the settlement classes who did not opt
7 out or withdraw their FLSA consent: up to \$15,000 for a service award to Bakhtiar; up to
8 \$562,500 in attorneys' fees (25% of the Total Settlement Amount); up to \$25,000 in costs; up to
9 \$15,000 in costs of settlement administration; \$16,875 for the LWDA's portion of the PAGA
10 Payment¹; and all employee-side payroll and employment taxes and tax expenses. ECF No. 121-2
11 ¶¶ 2.27, 2.6, 2.36. The Net Distribution Fund is estimated to be \$1,615,625. *Id.* The Total
12 Settlement Amount does not include employer-side payroll and employment taxes for wage
13 payments under the amended settlement agreement, which ISI agrees to pay separately. *Id.* ¶ 2.36.

14 As part of the amended settlement agreement, IRI agreed to reevaluate the job
15 responsibilities of persons who hold certain positions and to, among other things, provide status
16 reports to class counsel for two years after the entry of final judgment with respect to its re-
17 classification of these employees, if any. *Id.* ¶ 4.15.

18 The persons eligible to receive distributions from the Net Distribution Fund are grouped
19 into three settlement classes. Each settlement class has its own release clause and its own
20 procedures for deeming a settlement class member either eligible to receive a distribution as a
21 member of the settlement class or excluded from the settlement class, as described in more detail
22 below. The settlement classes are defined as follows:

23 "California Class Members" means all individuals employed by
24 Defendant within the state of California at any time from August 9,
25 2013, through May 30, 2019, and who have been employed by
26 Defendant as Client Service Managers, Client Solutions Managers,

26 ¹ Under the amended settlement agreement, "PAGA Payment" means a total payment of \$22,500,
27 or 1% of the Total Settlement Fund, to settle all claims under PAGA. From this amount, 75%, or
28 \$16,875, will be paid to the LWDA and 25%, or \$5,625, will be distributed to members of the
California settlement class. ECF No. 121-2 ¶ 2.28.

1 Client Service Analysts, Client Service Consultants, and other
 2 similar, non-management positions, including Client Insights
 3 Analysts, and Client Insights Consultants. The California Class
 4 Members did not opt into the FLSA as collective action members
 and are not releasing FLSA Collective Claims. The California Class
 Members are only releasing their California Claims as a result of
 this settlement. The total number of California Class Members is 77
 individuals.

5 *Id.* ¶ 2.2 (“California settlement class”).

6 “FLSA Collective Members” means all individuals who were
 7 employed by Defendant within the United States but outside of
 8 California as Client Service Managers, Client Solutions Managers,
 9 Client Service Analysts, Client Service Consultants, and other
 10 similar, non-management positions, including Client Insights
 11 Analysts, and Client Insights Consultants and who opted into this
 matter prior to March 6, 2019, the date of the second mediation in
 this case. The FLSA Collective Members are only releasing FLSA
 Collective Claims. . . . The total number of FLSA Collective
 Members is 46 individuals.

12 *Id.* ¶ 2.16 (“FLSA settlement class”).

13 “Hybrid Settlement Members” means all individuals who are both
 14 California Class Members and FLSA Collective Members. The
 15 Hybrid Settlement Members are releasing California Class Claims
 for the period they were employed in California and are also
 16 releasing FLSA Collective Claims. The total number of Hybrid
 Members is 6 individuals.

17 *Id.* ¶ 2.19 (“hybrid settlement class”).

18 Out of the 129 members of the three settlement classes, which are identified in Exhibits 1
 19 through 3 to the amended settlement agreement, ECF No. 121-2, only persons who did not opt out
 20 within 45 days from the date the notice was mailed (“settlement notice period”) are eligible to
 21 receive payments as members of the California settlement class; only persons who did not
 22 withdraw their consent to join under the FLSA during the settlement notice period are eligible to
 23 receive payments as members of the FLSA settlement class; and only persons who did not
 24 withdraw their FLSA consent to join and did not opt out during the settlement notice period are
 25 eligible to receive payments as members of the hybrid settlement class. *Id.* ¶¶ 2.3, 2.17, 2.19,
 26 2.23. A member of the California settlement class and hybrid class could object within 45 days of
 27 the date the notice was mailed.
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The claims that the members of each of the settlement classes will release if they did not opt out or withdraw their FLSA consent, respectively, are the following:

“California Class Claims” means all claims for wages, reimbursements and related penalties actually alleged or that could have been alleged in the Action by Plaintiff, on behalf of herself and the California Class Members, that arise out of the allegations alleged in the operative First Amended Complaint, including but not limited to: (1) Failure to Pay All Wages; (2) Failure to Pay Overtime under Cal. Labor Code §§ 510, 1194, and IWC Wage Orders; (3) Failure to Provide and/or Authorize Meal and Rest Periods under Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders; (4) Failure to Provide Accurate Itemized Wage Statements under Cal. Labor Code § 226; (5) Failure to Pay Earned Wages Upon Discharge, Waiting Time Penalties under Cal. Labor Code §§ 201-204; (6) Failure to Reimburse Business Expenses under Cal. Labor Code § 2802; and (7) Unlawful and/or Unfair Business Practices in Violation of Cal. Business & Professions Code § 17200, et seq.; (8) penalties pursuant to the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2699, et seq.; and (9) attorneys’ fees and costs of litigation associated with this Action. The California Class Claims do not encompass the FLSA Collective Claims and do not release any claims under the FLSA. . . .

“FLSA Collective Claims” means all federal claims for wages, benefits and related penalties actually alleged or that could have been alleged in the Action by Plaintiff, on behalf of herself and the FLSA Collective Members, based on the facts alleged in the operative First Amended Complaint, (1) namely, failure to pay all minimum and overtime wages due under the Fair Labor Standards Act (29 U.S.C. §201, et seq.) and (2) attorneys’ fees and costs of litigation incurred to litigate and resolve this Action. The FLSA Collective Claims do not encompass the California Class Claims, and the California Class Claims do not encompass the FLSA Collective Claims. . . .

“Hybrid Settlement Members’ Released Claims” means the (1) California Class Claims that the Hybrid Members are fully and irrevocably releasing in exchange for the consideration provided by this Settlement Agreement, whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages from August 9, 2013, through May 30, 2019, and (2) the FLSA Collective Claims that the FLSA Settlement Collective Members are fully and irrevocably releasing in exchange for the consideration provided by this Settlement Agreement from three years before each FLSA Collective Members Opt-In Date through the date of the Preliminary Approval Order.

Id. ¶¶ 2.1, 2.15, 2.21.

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1 The amended settlement agreement contains a blow provision that allows ISI to void the
2 agreement if more than 10% of the California settlement class members and hybrid settlement
3 class members opt out, or more than five FLSA settlement class members who have not
4 previously released their claims request to withdraw their consent to join during the settlement
5 notice period. *Id.* ¶ 7.3.

6 The amended settlement agreement describes a plan for distributing the Net Distribution
7 Fund to eligible members of the settlement classes as one that will allocate funds based on “a
8 proportional, workweek basis, with a multiplier of 1.75x applied to workweeks of the California
9 Settlement Class Members to account for the additional causes of action and remedies available to
10 and released by wage claimants in California, and a multiplier of 2.0x applied to workweeks of the
11 Hybrid Settlement Members who have both California claims and opted-into the FLSA collective
12 action.” *Id.* ¶ 4.6. Members of the settlement classes could dispute the dates of their employment,
13 location, or total workweeks by providing notice to the settlement administrator before the date for
14 opting out or objecting to the amended settlement agreement by demonstrating through
15 employment documentation described in paragraph 6.8 of the amended settlement agreement that
16 the settlement administrator’s calculations are incorrect. *Id.* ¶ 6.8.

17 Payments will be mailed to the addresses of eligible settlement class members; eligible
18 settlement class members are not required to submit a claim form. *Id.* ¶¶ 10.2, 10.3. If any checks
19 remain uncashed or amounts remain undistributed totaling less than \$10,000, then the settlement
20 administrator will pay such funds to the UC Hastings College of the Law Workers’ Rights Clinic.
21 ECF No. 121-2 ¶ 10.3. Counsel for Bakhtiar represents that this organization is an appropriate cy
22 pres recipient because it provides legal services for low-wage workers in California in wage-and-
23 hour cases.² ECF No. 144-1 ¶ 23. Any undistributed amounts in excess of \$10,000 will be
24 redistributed to the settlement class members *pro rata*. ECF No. 121-2 ¶ 10.4.

25

26 ² The Court finds that the cy pres recipient has the requisite nexus to the settlement classes and the
27 objectives of the statutes that form the basis of the claims at issue in this action and is, therefore, is
28 an appropriate cy pres beneficiary. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2013)
 (“A cy pres award must be guided by (1) the objectives of the underlying statute(s) and (2) the
 interests of the silent class members and must not benefit a group too remote from the plaintiff
 class.”); *see also Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *8

1 Bakhtiar’s counsel estimates that “Class Members’ theoretical unpaid wages, including
 2 missed meal and rest breaks and liquidated damages, total \$8,684,583.35 for the California Class
 3 and \$4,366,459.52 for the FLSA Class, for a total of \$13,051,042.87.” ECF No. 121-1 ¶¶ 5-6.
 4 The total possible recovery for the settlement classes increases to \$15,931,764.30 if maximum
 5 PAGA penalties, which total \$2,880,721.43, are taken into account. *Id.* The Total Settlement
 6 Amount of \$2,250,000, therefore, equals 14.12% of the total possible recovery. *Id.*

7 The settlement administrator sent on October 28, 2020, a notice specifically tailored to the
 8 members of each of the three settlement classes by first-class mail, as well as by email and text
 9 message to those for whom email and cell phone numbers were available in ISI’s human resources
 10 database. *Id.* ¶¶ 6.1, 6.2, 6.9; ECF No. 144-6 ¶ 10. The settlement administrator also set up a
 11 website with links to relevant case and settlement documents, and a telephone number, email
 12 address, and post office box to receive communications from members of the settlement classes.
 13 ECF No. 144-6 ¶¶ 1-17.

14 **D. Jurisdiction**

15 The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1367.

16 **II. LEGAL STANDARD**

17 The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of class
 18 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Rule 23 requires
 19 courts to employ a two-step process in evaluating a class action settlement. First, the parties must
 20 show “that the court will likely be able to . . . (i) approve the proposal under Rule 23(e)(2).” Fed.
 21 R. Civ. P. 23(e)(1)(B). In other words, a court must make a preliminary determination that the
 22 settlement “is fair, reasonable, and adequate” when considering the factors set out in Rule
 23 23(e)(2). Fed. R. Civ. P. 23(e)(2). The court’s task at the preliminary approval stage is to
 24 determine whether the settlement falls “within the range of possible approval.” *In re Tableware*
 25 *Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (citation omitted); *see also* Manual

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 27 (C.D. Cal. Nov. 18, 2014) (approving The Legal Aid Society-Employment Law Center as a cy
 28 pres beneficiary in a wage-and-hour action because it “provides direct legal services in
 employment law for low-wage workers in California”).

1 for Complex Litigation, Fourth § 21.632 (FJC 2004) (explaining that courts “must make a
2 preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms
3 and must direct the preparation of notice of the certification, proposed settlement, and date of the
4 final fairness hearing”). “The initial decision to approve or reject a settlement proposal is
5 committed to the sound discretion of the trial judge.” *City of Seattle*, 955 F.2d at 1276 (citation
6 omitted). Courts “must be particularly vigilant not only for explicit collusion, but also for more
7 subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain
8 class members to infect the negotiations.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
9 935, 947 (9th Cir. 2011). If no class has yet been certified, a court must likewise make a
10 preliminary finding that it “will likely be able to . . . (ii) certify the class for purposes of judgment
11 on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). If the court makes these preliminary findings, it
12 “must direct notice in a reasonable manner to all class members who would be bound by the
13 proposal.” *Id.*

14 Second, courts must hold a hearing pursuant to Rule 23(e)(2) to make a final determination
15 of whether the settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The
16 proposed settlement need not be ideal, but it must be fair and free of collusion, consistent with
17 counsel’s fiduciary obligations to the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th
18 Cir. 1998) (“Settlement is the offspring of compromise; the question we address is not whether the
19 final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from
20 collusion.”). To assess a settlement proposal, courts must balance a number of factors:

21 [T]he strength of the plaintiffs’ case; the risk, expense, complexity,
22 and likely duration of further litigation; the risk of maintaining class
23 action status throughout the trial; the amount offered in settlement;
24 the extent of discovery completed and the stage of the proceedings;
the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed
settlement.

25 *Id.* at 1026 (citations omitted).³ The proposed settlement must be “taken as a whole, rather than

26
27 ³ These factors are substantially similar to those articulated in the 2018 amendments to Rule 23(e),
28 which were not intended “to displace any factor [developed under existing Circuit precedent], but
rather to focus the court and the lawyers on the core concerns of procedure and substance that
should guide the decision whether to approve the proposal.” *Hefler v. Wells Fargo & Co.*, No. 16-

1 the individual component parts,” in the examination for overall fairness. *Id.* Courts do not have
 2 the ability to “delete, modify, or substitute certain provisions”; the settlement “must stand or fall in
 3 its entirety.” *Id.* (citation omitted).

4 **III. DISCUSSION**

5 **A. Motion for final approval of the amended settlement agreement**

6 **1. Notice plan**

7 Under Federal Rule of Civil Procedure 23(c)(2)(B), “the court must direct to class
 8 members the best notice that is practicable under the circumstances, including individual notice to
 9 all members who can be identified through reasonable effort.” The notice must state in plain,
 10 easily-understood language:

11 (i) the nature of the action; (ii) the definition of the class certified;
 12 (iii) the class claims, issues, or defenses; (iv) that a class member
 13 may enter an appearance through an attorney if the member so
 14 desires; (v) that the court will exclude from the class any member
 15 who requests exclusion; (vi) the time and manner for requesting
 16 exclusion; and (vii) the binding effect of a class judgment on
 17 members under Rule 23(c)(3).

18 Fed. R. Civ. P. 23(c)(2)(B).

19 Here, as described above, the settlement administrator sent a notice to the members of each
 20 of the three settlement classes on October 28, 2020, that was specifically tailored to that
 21 individual’s settlement class by first-class mail, as well as by email and text message to those for
 22 whom email and cell phone numbers were available in ISI’s human resources database. The
 23 settlement administrator also set up a website with links to relevant case and settlement
 24 documents, and a telephone number, email address, and post office box to receive communications
 25 from members of the settlement classes. As noted, no objections have been filed.

26 In light of the foregoing, the Court concludes that the notice sent to the members of the
 27 settlement classes was the best one practicable under the circumstances and that it satisfies the
 28 requirements of Rule 23 and due process.

CV-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018) (quoting Fed. R. Civ. P. 23(e)(2) advisory committee’s note to 2018 amendment).

1 **2. Fairness, adequacy, and reasonableness of the amended settlement**
2 **agreement**

3 With the exception of the reaction of the members of the settlement classes, the Court
4 analyzed the necessary factors and found the amended settlement agreement to be fair, adequate,
5 and reasonable when it granted preliminary approval of the agreement. ECF No. 131 at 10-17.

6 Now that the members of the settlement classes have been provided with notice of the
7 settlement and have had an opportunity to be heard, the Court finds no reason to alter this
8 conclusion. As noted above, no member of the settlement classes has objected to the settlement
9 and only one requested to opt out. “[T]he absence of a large number of objections to a proposed
10 class action settlement raises a strong presumption that the terms of a proposed class settlement
11 action are favorable to the class members.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
12 1043 (N.D. Cal. 2008) (citation omitted).

13 Accordingly, the Court continues to find that the amended settlement agreement is fair,
14 reasonable, and adequate, and it, therefore, grants Bakhtiar’s motion for final approval of the
15 same.

16 **3. Error by settlement administrator**

17 In the motion for final approval, Bakhtiar represents that the settlement administrator made
18 a “calculation error” and, as a result, it “overstated a handful of Class Members’ recovery in their
19 notices.” ECF No. 143 at 4. After Rust notified the parties of this error, Bakhtiar’s counsel
20 obtained the settlement administrator’s agreement that it would contribute the additional amount
21 needed to cover the difference between what the settlement class members should have obtained
22 pursuant to the terms of the amended settlement agreement and the incorrect amount that was
23 stated in the notice they received. *Id.* Counsel for Bakhtiar now request that the Court permit the
24 settlement administrator to be reimbursed for the additional amounts it paid to correct its error,
25 which total \$18,977.69, out of any amounts that remain uncollected as a result of uncashed checks,
26 before any such remaining amounts are paid to the cy pres beneficiary.

27 Bakhtiar cites no authority showing that a court can modify a settlement agreement to
28 reallocate funds that would have been paid to a cy pres beneficiary so that such funds can be used
instead to reimburse the settlement administrator for extra amounts it paid to settlement class

1 members as a result of its own errors. Accordingly, the Court declines to modify the terms of the
 2 amended settlement agreement at this juncture as Bakhtiar proposes, particularly given that notice
 3 to the settlement class members has been sent and the deadline for objecting and opting out of the
 4 settlement has passed. If they wish, counsel for Bakhtiar may reimburse the settlement
 5 administrator for the additional costs it incurred to correct its error using funds from their fee
 6 award.

7 **B. Motion for attorneys' fees, costs, and service award**

8 **1. Attorneys' fees**

9 "For more than two decades, the Ninth Circuit has set the 'benchmark for an attorneys' fee
 10 award in a successful class action [at] twenty-five percent of the entire common fund.'" *In re*
 11 *Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 519 (N.D. Cal. 2020) (Tigar,
 12 J.) (quoting *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)). Under
 13 this approach, courts generally start with the 25% benchmark and adjust upward or downward
 14 depending on:

15 [T]he extent to which class counsel "achieved exceptional results
 16 for the class," whether the case was risky for class counsel,
 17 whether counsel's performance "generated benefits beyond the
 18 cash . . . fund," the market rate for the particular field of law (in
 some circumstances), the burdens class counsel experienced while
 litigating the case (e.g., cost, duration, foregoing other work), and
 whether the case was handled on a contingency basis.

19 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015) (quoting *Vizcaino*
 20 *v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)). Courts often also compare the
 21 percentage-based attorneys' fee award against the lodestar, "which measures the lawyers'
 22 investment of time in the litigation," because the lodestar "provides a check on the reasonableness
 23 of the percentage award." *Vizcaino*, 290 F.3d at 1050.

24 Bakhtiar requests an award of attorneys' fees of \$562,500, which is 25% of the \$2,250,000
 25 Total Settlement Amount. The requested award is precisely at the 25% benchmark that the Ninth
 26 Circuit considers to be presumptively reasonable. *In re Bluetooth*, 654 F.3d at 942 ("[C]ourts
 27 typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing
 28 adequate explanation in the record of any 'special circumstances' justifying a departure.").

1 The Court finds that the requested fee award of 25% of the Total Settlement Amount is
2 appropriate and reasonable, and that it requires no upward or downward adjustment. The
3 substantial results that Bakhtiar’s counsel achieved for the members of the settlement classes
4 support this finding. As noted in the Court’s order granting preliminary approval of the amended
5 settlement agreement, the monetary recovery that counsel achieved for members of the settlement
6 classes equals 14.12% of the total possible recovery, and members of the settlement classes will
7 receive a net average of \$12,625.12 per person. ECF No. 131 at 15; *see also* ECF No. 144 at 5.
8 This recovery exceeds the recoveries achieved in several other similar actions. *See Pierce v.*
9 *Rosetta Stone, Ltd.*, No. 11-cv-01283 SBA, 2013 WL 5402120, at *4 (N.D. Cal. Sept. 26, 2013)
10 (approving settlement agreement in wage-and-hour action where the “average recovery for
11 California Class Members is \$3,890.63 for the California claims and \$2,964.29 for the FLSA
12 claim”). Counsel also obtained significant non-monetary relief, namely ISI’s agreement to
13 reevaluate the job responsibilities of persons who hold certain positions and to, among other
14 things, provide status reports to class counsel for two years after the entry of final judgment with
15 respect to its re-classification of these employees.

16 The requested award also is justified in light of the significant risks that counsel undertook
17 in litigating this action on a contingency basis. *See* ECF No. 144-1 ¶ 11; *see also In re Heritage*
18 *Bond Litig.*, No. 02-ML-1475 DT, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005)
19 (approving fee award of 33.3% of the common fund as reasonable in part because of “the
20 significant risk assumed in litigating this case on contingency fee without any guarantee of
21 compensation”). As discussed in the Court’s order granting preliminary approval of the amended
22 settlement agreement, counsel identified several significant risks they would face if this litigation
23 were to continue, including obstacles in obtaining and maintaining certification under Rule 23 and
24 surviving summary judgment based on administrative exemptions that ISI has raised as defenses.
25 The risks involved in prosecuting this litigation, in combination with the fact that counsel litigated
26 the action on a contingency basis, supports granting a fee award of 25% of the settlement fund.
27 *See Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *10 (C.D. Cal.
28 Nov. 18, 2014) (approving fee award of 33.3% of the settlement fund in part because of “the

1 considerable risk” that counsel undertook, “coupled with Counsel’s contingency fee
2 arrangement”).

3 A lodestar cross-check further supports a finding that the requested award is appropriate.
4 To calculate the lodestar, the court “multiplies a reasonable number of hours by a reasonable
5 hourly rate.” *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002).
6 Here, counsel spent 869.3 hours billed at counsel’s current rates, which range from \$425 per hour
7 to \$775 per hour for attorneys and are \$200 per hour for paralegals. ECF No. 144-1 ¶¶ 1-17. The
8 number of hours spent are appropriate, and counsel’s current rates⁴ are reasonable in light of the
9 prevailing rates in this district. *See Smith v. Am. Greetings Corp.*, Case No. 14-cv-02577-JST,
10 2016 WL 2909429, at *9 n.7 (N.D. Cal. May 19, 2016) (Tigar, J.) (noting that, in this district,
11 “reasonable rates for partners range from \$560 to \$800, associates range from \$285 to \$510, and
12 paralegals and litigation support staff range from \$150 to \$240”) (internal quotations and citation
13 omitted). The lodestar, therefore, is \$407,825.00. ECF No. 144-1 ¶ 10. The multiplier is 1.38,
14 which “falls within the Ninth Circuit’s presumptively acceptable range of 1.0-4.0.” *Dyer v. Wells*
15 *Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014) (Tigar, J.) (citing *Vizcaino*, 290 F.3d at
16 1051 n.6).

17 Accordingly, the Court grants Bakhtiar’s request for an attorneys’ fee award of \$562,500.

18 **2. Litigation costs**

19 Bakhtiar requests an award of \$24,610 in costs that her counsel incurred on litigation-
20 related expenses, including filing and service costs, legal research fees, discovery and deposition
21 costs, and mediation costs. ECF No. 144-1 ¶ 6. The amended settlement agreement provides that
22 counsel may seek reimbursement of up to \$25,000 in costs. The requested costs are reasonable
23 and appropriate, because they appear to have been necessary to prosecute this action and are of the
24 type customarily billed to a fee-paying client. *See Salazar v. McDonald’s Corp.*, No. 3:14-cv-
25 02096-RS, 2017 WL 6883994, at *2 (N.D. Cal. Sept. 15, 2017) (awarding requested costs and
26

27 ⁴ *See Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016) (“The lodestar should be computed
28 either using an hourly rate that reflects the prevailing rate as of the date of the fee request, to
compensate class counsel for delays in payment inherent in contingency-fee cases, or using
historical rates and compensating for delays with a prime-rate enhancement.”).

1 expenses to counsel because they were “necessary to the prosecution of this litigation, were the
2 sort of expenses normally billed to paying clients, and were incurred for the benefit of the class”);
3 *Rutti v. Lojack Corp.*, No. SACV 06-350 DOC JCX, 2012 WL 3151077, at *12 (C.D. Cal. July 31,
4 2012) (“Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance
5 telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents
6 scanning, and visual equipment are typically recoverable.”). Accordingly, the Court grants
7 Bakhtiar’s motion for an award of \$24,610 in costs.

8 3. Service award

9 “Incentive awards are payments to class representatives for their service to the class in
10 bringing the lawsuit.” *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1163 (9th Cir.
11 2013). “It is well-established in this circuit that named plaintiffs in a class action are eligible for
12 reasonable incentive payments, also known as service awards.” *Wren v. RGIS Inventory*
13 *Specialists*, No. 06-cv-05778 JCS, 2011 WL 1230826, at *31 (N.D. Cal. Apr. 1, 2011),
14 *supplemented*, No. 06-cv-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011). An incentive
15 award of \$5,000 is presumptively reasonable, and an award of \$25,000 or even \$10,000 is
16 considered “quite high.” *See Dyer*, 303 F.R.D. at 335 (citation omitted). “Nonetheless, a higher
17 award may be appropriate where class representatives expend significant time and effort on the
18 litigation and face the risk of retaliation or other personal risks; where the class overall has greatly
19 benefitted from the class representatives’ efforts; and where the incentive awards represent an
20 insignificant percentage of the overall recovery.” *In re Wells Fargo*, 445 F. Supp. 3d at 534
21 (citation omitted).

22 Bakhtiar requests an incentive award of \$15,000. The Court finds that this award, which is
23 higher than the presumptively reasonable award of \$5,000, is justified and reasonable, because
24 Bakhtiar has shown that her efforts and contributions to this litigation, and the risks she undertook
25 as a result thereof, were greater than those of the average lead plaintiff. Specifically, Bakhtiar
26 risked reputational harm in her industry as a result of being a lead plaintiff in an action against her
27 former employer; she spent dozens of hours over the course of more than three years assisting her
28 counsel in prosecuting this action; she was deposed over the course of twelve hours; she

1 participated in two full days of mediation; and she assisted counsel in responding to 47 requests
2 for the production of documents and 25 requests for interrogatories. ECF No. 144-1 ¶ 9.
3 Accordingly, the Court grants Bakhtiar's request for a \$15,000 incentive award.

4 **4. Costs of settlement administration**

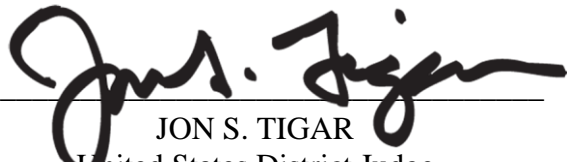
5 Bakhtiar requests that the Court approve an award of administration costs to the settlement
6 administrator of \$15,000. Because the amended settlement agreement provides that up to \$15,000
7 may be paid to the settlement administrator from the Total Settlement Fund, the Court approves
8 Bakhtiar's request.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court grants Bakhtiar's motion for final approval of the
11 amended settlement agreement, as well as her motion for attorneys' fees, costs, and an incentive
12 award.

13 **IT IS SO ORDERED.**

14 Dated: February 10, 2021

15 
16 _____
17 JON S. TIGAR
18 United States District Judge

United States District Court
Northern District of California