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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re GEICO General Insurance Company

Case No. [19-cv-03768-HSG](#)

**ORDER GRANTING MOTION FOR
FINAL APPROVAL AND GRANTING
IN PART AND DENYING IN PART
MOTION FOR ATTORNEYS’ FEES**

Re: Dkt. Nos. 164, 165

Before the Court are the motions for final approval of class action settlement and for attorneys’ fees, costs, and service award. *See* Dkt. No. 164, 165. The Court held a final fairness hearing on December 15, 2022. The Court **GRANTS** final approval and **GRANTS IN PART** and **DENIES IN PART** Plaintiffs’ motion for attorneys’ fees, costs, and service award.

I. BACKGROUND

A. Factual Background

Plaintiffs bring this consolidated class action against Defendant GEICO General Insurance Company, alleging that Defendant breached the terms of private passenger auto insurance policies issued to Plaintiffs and similarly situated insureds by failing to properly include or calculate sales tax (as to leased vehicles) and regulatory fees (as to all vehicles). *See* Dkt. No. 165 at 15.¹ Plaintiffs allege that Defendant’s insurance policies require payment of actual cash value (“ACV”) upon the total loss of a covered auto and define ACV as the “replacement cost” of the auto, less depreciation. *Id.* Plaintiffs argue that (1) the insurance policies require Defendant to include sales tax on the cost to purchase a replacement vehicle when paying leased-vehicle claims; and (2)

¹ For ease of reference, the Court refers to the PDF pagination unless otherwise noted.

1 under Cal. Ins. Code § 2695.8(b)(1), registration fees for the “remaining term of the loss vehicle’s
2 current registration” should be calculated on an end-of-month (rather than, as Defendant contends,
3 a beginning-of-month) basis or, alternatively, on a daily (not monthly) basis. *See* Dkt. No. 164-3
4 (“Phillips Decl.”) ¶¶ 12–13.

5 Named Plaintiff Cindy Ventrice-Pearson owned/financed and insured a 2010 Mini Cooper
6 that, as the result of an accident, was determined to be a total loss. Dkt. No. 75 ¶¶ 24–27.
7 Defendant paid Plaintiff Ventrice-Pearson \$8,508.76, including a base value of \$7,408.00, sales
8 tax of \$703.76, state and local regulatory fees of \$97.00, and a post-tax adjustment of \$300.00. *Id.*
9 ¶¶ 27, 29. However, Plaintiffs allege that Defendant underpaid the true state and local regulatory
10 fees owed. *Id.* ¶ 30.

11 Named Plaintiff Poonam Subbaiah leased and insured a 2017 Porsche 911 Carrera which,
12 as a result of theft, was determined to be a total loss. *Id.* ¶¶ 16–17. Defendant agreed to an ACV
13 payment of \$87,345, composed of the payoff amount to the lienholder, a \$500 policy deductible,
14 and \$17,211.26 paid to Plaintiff Subbaiah. *Id.* ¶ 18. Plaintiffs allege that Defendant breached its
15 policy terms by determining that because the vehicle was leased and not owned by Plaintiff
16 Subbaiah, no ACV Sales Tax was owed under the policy. *Id.* ¶ 19. Plaintiffs also allege
17 Defendant’s payment for state and regulatory fees constituted only a portion of the state and
18 regulatory fees owed under the Policy. *Id.* ¶ 21.

19 Named Plaintiff Kristin Perez leased and insured a 2018 Honda Clarity Plug-In Touring,
20 which, as the result of an accident, was determined to be a total loss. *Perez v. Geico Indemnity*
21 *Company*, No. 20-cv-07436-HSG, Dkt. No. 1 ¶¶ 37–38. Defendant agreed to an ACV payment of
22 \$35,924.00, composed of the payoff amount to the lienholder, added state and regulatory fees of
23 \$385.00, and a \$1,000.00 deductible. *Id.* ¶¶ 39–41. Plaintiffs allege that Defendant paid none of
24 the estimated \$2,769.30 in sales tax Plaintiffs allege was owed under the insurance policy. *Id.*
25 ¶ 42.

1 **B. Procedural History**

2 Named Plaintiff Ventrice-Pearson filed a claim on behalf of herself and all others similarly
3 situated in June 2019. *See* Dkt. No. 1.² Named Plaintiff Subbaiah filed her claim in July 2019,
4 and Named Plaintiff Perez filed her claim in October 2020. Phillips Decl. ¶¶ 4–5. The Perez and
5 Subbaiah cases have since been transferred to this Court and consolidated with the Ventrice-
6 Pearson case for purposes of settlement. Dkt. Nos. 72, 142.

7 Over the course of two years, the parties engaged in motion practice, *see, e.g.*, Dkt. Nos.
8 30, 120; extensive production and review of documents and class-wide data, *see* Phillips Decl.
9 ¶¶ 15–17; and multiple depositions, including the depositions of corporate representatives, class
10 representatives, and expert witnesses, *see id.* ¶¶ 17, 58. After multiple mediation sessions, *see id.*
11 ¶ 25, the parties reached a settlement, *see* Dkt. No. 135. The Court granted preliminary approval
12 of the settlement on July 28, 2022. *See* Dkt. No. 161.

13 **C. Settlement Agreement**

14 The key terms of the parties’ Settlement Agreement, Dkt. No. 139-4, Ex. 1 (“Settlement
15 Agreement” or “SA”), are as follows:

16 Class Definition: The Settlement Class is defined as

17 **Regulatory Fees Class:**

18 All individual insureds under an Automobile Insurance Policy
19 covering a vehicle with private-passenger auto physical damage
20 coverage with comprehensive or collision coverage, whose claim was
21 adjusted under Section III of the GEICO’s Automobile Insurance
22 Policy (i.e. comprehensive or collision coverage) during the Class
Period, that was determined by GEICO to be a covered claim and
where GEICO determined that the vehicle was a total loss and did not
pay to repair the damage to the vehicle and where the
insured did not retain the salvage vehicle.

23 **Sales Tax Class:**

24 All individual insureds under an Automobile Insurance Policy
25 covering a leased vehicle with private-passenger auto physical
26 damage coverage with comprehensive or collision coverage, who’s
claim was adjusted under Section III of the GEICO’s Automobile
Insurance Policy (i.e. comprehensive or collision coverage), during
the Class Period, that was determined by GEICO to be a covered

27 _____
28 ² Ms. Martisha Ann Munoz joined Ms. Ventrice-Pearson in bringing the original complaint in June
2019, *see* Dkt. No. 1, but was not included as a named plaintiff in the Consolidated Amended
Complaint, *see* Dkt. No. 75.

1 claim and where GEICO determined that the vehicle was a total loss
 2 and did not pay to repair the damage to the vehicle, where the
 insured did not retain the total-loss vehicle and where GEICO did not
 include ACV Sales Tax in the Total Loss Claim Payment(s).

3 SA ¶ 11.

4 The “Regulatory Fees Class” and the “Sales Tax Class” are referred to collectively as the
 5 “Settlement Class.” *Id.* Excluded from the Settlement Class are (1) Defendant, all present or
 6 former officers and/or directors and/or employees of Defendant, the Neutral Evaluator, class
 7 counsel, and any Judge of this Court; (2) claims for which Defendant received a valid and
 8 executed release; and (3) individual claims for first-party property damage for which the process
 9 of appraisal or arbitration or litigation has been completed or initiated at the time this Settlement
 10 Agreement is filed. *Id.*

11 Settlement Benefits:

12 Defendant has agreed to: (1) upon submission of a valid claim by a Regulatory Fees Class
 13 member, pay \$6.88, representing one-half of an average monthly payment in regulatory fees, and
 14 (2) upon submission of a valid claim by a Sales Tax Class member, pay \$6.88 in regulatory fees
 15 plus the sales tax at the applicable state and county rate at the time of loss to all insureds. SA
 16 ¶¶ 27–28. Claims will be paid on a claims-made basis. *Id.* ¶ 26. Additionally, absent a clarifying
 17 change in statutory law or a contrary opinion by the Ninth Circuit or California appellate court, in
 18 the future Defendant will, for total loss covered vehicles, (a) pay sales tax at the applicable rate to
 19 leased-vehicle insureds and (b) calculate and pay regulatory fees as a daily proration, rather than
 20 subtracting the monthly amount at the beginning of each month. *Id.* ¶ 60.

21 Release: Under the settlement agreement, all class members will release:

22 any and all known and unknown claims, rights, actions, suits or causes
 23 of action of whatever kind or nature, whether *ex contractu* or *ex*
 24 *delicto*, statutory, common law or equitable, including but not limited
 25 to breach of contract, bad faith or extracontractual claims, and claims
 26 for punitive or exemplary damages, or prejudgment or postjudgment
 27 interest, arising from or relating in any way to GEICO’s failure to pay
 28 sufficient sales tax and/or regulatory fees to Plaintiffs and all
 Settlement Class Members with respect to any Covered Total Loss
 Claim during the Class Period under an Automobile Insurance Policy.
 Released Claims do not include any claims, actions, or causes of
 action alleging that GEICO failed to properly calculate the base or
 adjusted value of total loss vehicles except to the extent that such

1 claims, actions, or causes of action relate to failure to pay sufficient
2 sales tax and/or regulatory fees.

3 SA ¶ 48; *see also id.* ¶ 48.

4 Class Notice: KCC, a third-party settlement administrator, mailed notice to all reasonably
5 identifiable class members on two occasions, with pre-filled, detachable, and postage-prepaid
6 claim forms. SA ¶ 8; *see* Dkt. No. 165-2 (“Antonio Decl.”) ¶¶ 6–9, Exs. C–F. For any physical
7 addresses that were incomplete or missing, the Settlement Administrator searched the National
8 Change of Address Database. SA ¶ 10; Antonio Decl. ¶ 5. Notice was also provided twice by
9 email to Settlement Class Members for whom Defendant possessed an email address. Antonio
10 Decl. ¶¶ 10–13. Each of the email notices allowed class members to “click through” to the
11 settlement website, which includes an electronic claim form. *Id.* ¶ 14; *see* SA ¶¶ 11–12.

12 The notice included a summary of the claims and the settlement terms, the average claim
13 size, the released claims, and instructions on how to object to or opt out of the settlement,
14 including relevant deadlines. Antonio Decl., Exs. C–F (“Mail Notices”), G–J (“Email Notices”).
15 The Mail Notices also included the average individual claim payment for each class. *See* Mail
16 Notices. Defendant extracted available information from its claim records to pre-fill information
17 on the claim forms. SA ¶¶ 9, 11. To receive a Claim Payment, the Settlement Class member
18 needed to submit a claim form, declaring that the pre-filled Claim information is correct and that
19 they were a GEICO insured who suffered a total-loss during the Settlement Class period who did
20 not receive ACV Sales Tax and/or full Regulatory Fees. *See* Antonio Decl., Exs. L–M.

21 Service Award: Plaintiffs seek service awards of \$15,000 for Plaintiff Subbaiah, \$10,000
22 for Plaintiff Ventrice-Pearson, and \$5,000 for Plaintiff Perez, as allowed by the Settlement
23 Agreement. *See* Dkt. No. 164 at 10; SA ¶ 39. Any service award payments are separate from and
24 in addition to the payments available to Settlement Class Members and will not impact the amount
25 owed to Settlement Class Members. SA ¶ 40.

26 Attorneys’ Fees and Costs: Plaintiff’s counsel requests \$3,852,553.39 in attorneys’ fees
27 and \$47,446.61 in costs, for a total of \$3.9 million, as allowed by the Settlement Agreement. *See*
28 Dkt. No. 164 at 10; SA ¶¶ 38–42.

1 **II. DISCUSSION**

2 **A. Final Settlement Approval**

3 **i. Class Certification**

4 Final approval of a class action settlement requires, as a threshold matter, an assessment of
5 whether the class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b).
6 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019–22 (9th Cir. 1998). Because no facts that would
7 affect these requirements have changed since the Court preliminarily approved the class on July
8 28, 2022, this order incorporates by reference its prior analysis under Rules 23(a) and (b) as set
9 forth in the order granting preliminary approval. *See* Dkt. No. 161 at 6–10.

10 **ii. The Settlement**

11 “The claims, issues, or defenses of a certified class may be settled . . . only with the court’s
12 approval.” Fed. R. Civ. P. 23(e). The Court may finally approve a class settlement “only after a
13 hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Where
14 the parties reach a class action settlement prior to class certification, the Ninth Circuit has
15 cautioned that such settlement agreements “must withstand an even higher level of scrutiny for
16 evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e)
17 before securing the court’s approval as fair.” *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035,
18 1048–49 (9th Cir. 2019) (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946
19 (9th Cir. 2011)). A more “exacting review is warranted to ensure that class representatives and
20 their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who
21 class counsel had a duty to represent.” *Id.* (quotations omitted).

22 The Ninth Circuit has identified several “subtle signs” the Court should consider to
23 determine whether “class counsel have allowed pursuit of their own self-interests to infect the
24 negotiations.” *Roes*, 944 F.3d at 1043. These include: (1) “when counsel receive[s] a
25 disproportionate distribution of the settlement; (2) when the parties negotiate a clear-sailing
26 arrangement, under which the defendant agrees not to challenge a request for an agreed-upon
27 attorney’s fee; and (3) when the agreement contains a kicker or reverter clause that returns
28

1 unawarded fees to the defendant, rather than the class.” *McKinney-Drobnis v. Oreshack*, 16 F.4th
2 594, 607–08 (9th Cir. 2021) (quotation omitted).

3 To assess whether a proposed settlement comports with Rule 23(e), the Court may also
4 consider some or all of the following factors: (1) the strength of plaintiff’s case; (2) the risk,
5 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
6 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
7 completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the
8 presence of a governmental participant; and (8) the reaction of the class members to the proposed
9 settlement. *See id.* at 609. In addition, “[a]dequate notice is critical to court approval of a class
10 settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025.

11 As discussed below, the Court finds that the proposed settlement is fair, adequate, and
12 reasonable, and that class members received adequate notice.

13 **a. Adequacy of Notice**

14 Under Federal Rule of Civil Procedure 23(e), the Court “must direct notice in a reasonable
15 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).
16 Rule 23(c)(2)(B) requires “the best notice that is practicable under the circumstances, including
17 individual notice to all members who can be identified through reasonable effort.” The notice
18 must “clearly and concisely state in plain, easily understood language” the nature of the action, the
19 class definition, and the class members’ right to exclude themselves from the class. Fed. R. Civ.
20 P. 23(c)(2)(B). Although Rule 23 requires that reasonable efforts be made to reach all class
21 members, it does not require that each class member actually receive notice. *See Silber v. Mabon*,
22 18 F.3d 1449, 1454 (9th Cir. 1994) (noting that the standard for class notice is “best practicable”
23 notice, not “actually received” notice).

24 The Court finds that the notice and notice plan previously approved by the Court was
25 implemented and complies with Rule 23(c)(2)(B). *See generally* Antonio Decl.; Phillips Decl.
26 ¶ 33; SA ¶¶ 8–11. Mail notice was sent to 201,240 class members, with successful delivery rates
27 of 90% for the Regulatory Fees Class and 86% for the Sales Tax Class after efforts to locate
28 addresses for undeliverable notices and remail notice. Antonio Decl. ¶¶ 6–9; Dkt. No. 165 at

1 17–18. Email notice was sent to 182,116 class members, with a successful delivery rate of 97%
2 for both classes and 99% for the reminder email notice. Antonio Decl. ¶¶ 10–13; Dkt. No. 165 at
3 17–18. In light of these facts, the Court finds that the parties have sufficiently provided the best
4 practicable notice to the Class Members.

5 **b. Fairness, Adequacy, and Reasonableness**

6 Having found the notice procedures adequate under Rule 23(e), the Court next considers
7 whether the entire settlement comports with Rule 23(e).

8 In deciding the motion for preliminary approval, the Court considered all three signs of
9 collusion that the Ninth Circuit has identified. *See* Dkt. No. 161 at 12–13; *see also McKinney-*
10 *Drobnis*, 16 F.4th at 607–08. The Court noted that although the requested fee did not appear
11 disproportionate to the class recovery, the agreement included a clear sailing provision and the
12 “functional equivalent” of a reverter. *See* Dkt. No. 161 at 12–13. Again, the Court notes that
13 Class Counsel obtained significant results for the Class Members, and the Court still carefully
14 scrutinizes the requests for attorneys’ fees and incentive awards to ensure Class Members’
15 interests are protected under the settlement. *See* Section II.B. After reviewing the settlement and
16 requested attorneys’ fees in light of the actual benefit to the class, including the claim rate and
17 anticipated cash benefit, the Court finds that the settlement is fair and reasonable notwithstanding
18 the presence of these factors. *See Kim v. Allison*, 8 F.4th 1170, 1180 (9th Cir. 2021) (noting “[t]he
19 presence of these three signs is not a death knell,” but the district court must examine them and
20 develop the record to support its final approval decision). The Court finds that other factors
21 indicate that the proposed settlement is fair, adequate, and reasonable.

22 **1. Strength of Plaintiff’s Case & Litigation Risk**

23 Approval of a class settlement is appropriate when plaintiffs must overcome significant
24 barriers to make their case. *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 851 (N.D.
25 Cal. 2010). Difficulties and risks in litigating weigh in favor of approving a class settlement.
26 *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009). “Generally, unless the
27 settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
28

1 expensive litigation with uncertain results.” *Ching v. Siemens Indus., Inc.*, No. 11-cv-04838-MEJ,
2 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014) (quotations omitted).

3 The Court finds that the amount offered in settlement is reasonable in light of the
4 substantial risk that Plaintiffs would face in litigating the case. According to Plaintiffs, litigation
5 of these claims through trial presents significant challenges to prevailing on the merits since no
6 California court, state or federal, has held that insureds who leased a vehicle are entitled, upon a
7 total-loss determination, to full payment of sales tax. *See* Dkt. No. 165 at 20. They cite to
8 unfavorable decisions regarding Defendant’s policy language, including three federal courts of
9 appeal that have considered similar claims and ruled in favor of the insurers. Phillips Decl. ¶ 23.
10 In reaching a settlement, Plaintiffs have ensured a substantial recovery for the class without further
11 delay and uncertainty. *See Rodriguez*, 563 F.3d at 966 (finding litigation risks weigh in favor of
12 approving class settlement). Accordingly, these factors also weigh in favor of approving the
13 settlement. *See Ching*, 2014 WL 2926210, at *4 (favoring settlement to protracted litigation).

14 2. Settlement Amount

15 The amount offered in the settlement is another factor that weighs in favor of approval.
16 Based on the facts in the record and the parties’ arguments at the final fairness hearing, the Court
17 finds that the settlement amount falls “within the range of reasonableness” in light of the risks and
18 costs of litigation. *See* Dkt. No. 165 at 20–21; *see also Villanueva v. Morpho Detection, Inc.*, No.
19 13-cv-05390-HSG, 2016 WL 1070523, at *4 (N.D. Cal. March 18, 2016) (citing cases).

20 Although the Court expressed concerns at the preliminary approval stage regarding the
21 claims-made structure of this settlement, the actual monetary benefit to the class has turned out to
22 be substantial, even if less than anticipated. Defendant has conducted a preliminary audit of
23 submitted claims, and the actual estimated cash benefit for the class is \$6,200,000.³ *See* Dkt. No.

24 _____
25 ³ This is Plaintiffs’ most recent estimate. At the final fairness hearing, the Court directed
26 Defendant to conduct a sample audit of submitted claims. *See* Dkt. No. 176. Because Defendant’s
27 subsequent report stated there were more than 1,500 “pending” claims that had not been validated,
28 the Court directed Plaintiffs to submit another status report with updated estimates of the monetary
distribution to the Class. *See* Dkt. No. 177. The parties represent that the \$6.2 million estimate is
“conservative” because it does not include pending deficient claims, although the parties “do not
expect that a majority of these claims will be cured.” *See* Dkt. No. 178 at 3. The anticipated
payment to the class has dropped significantly from Plaintiffs’ estimate in the final approval

1 178 at 2. The settlement recovery is particularly compelling for the Sales Tax Class, where each
 2 class member will receive 100% of the sales tax (and thus 100% of the potential recovery). On
 3 average, class members with valid claims will receive more than \$2,000. *See* Dkt. No. 161 at 15.
 4 Plaintiffs estimate a total payout to the Sales Tax Class of approximately \$5,800,000. *See* Dkt.
 5 No. 178 at 2. For the Regulatory Fees class, each class member will receive \$6.88, which
 6 represents 50% of the potential recovery.⁴ Phillips Decl. ¶¶ 27–29; *see also* Dkt. No. 150 ¶¶ 5–13.
 7 Plaintiffs estimate a total payout to the Regulatory Fees Class of approximately \$402,824. *See*
 8 Dkt. No. 178 at 3.

9 Out of 201,240 class members, 61,265 submitted valid claims, for an estimated overall
 10 claim rate of about 30.4%. *See* Dkt. No. 178 at 4. By class, 2,715 out of 9,637 Sales Tax Class
 11 members submitted a valid claim, for a claim rate of 28.1%. *See id.* at 4–5. Meanwhile, 58,550
 12 out of 191,603 Regulatory Fees Class members submitted a valid claim, for an estimated claim
 13 rate of 30.5%. *See id.* at 5. This is on the high end of what Plaintiffs anticipated. *See* Dkt. No.
 14 150 ¶¶ 33–39.

15 The settlement also provides injunctive relief because Defendant will include sales tax at
 16 the applicable rate to leased-vehicle insureds and calculate regulatory fees as a daily proration for
 17 all qualifying insureds. Phillips Decl. ¶¶ 32, 37–38. Plaintiffs calculate that one year’s worth of
 18 prospective relief is worth approximately \$4.8 million. *Id.* ¶ 38.⁵

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 21 _____
 22 motion. Dkt. No. 165 at 14 (estimating \$12,041,118); Dkt. No. 169 at 3 (\$10,300,957.70); Dkt
 No. 178 at 2 (\$6,200,000).

23 ⁴ Plaintiffs acknowledge that “GEICO calculated the registration fees it included in total-loss
 24 settlements based on the remaining term of a total-loss vehicle’s registration at the time of the loss
 and paid a prorated amount in fees.” Dkt. No. 150 ¶ 9. However, the parties dispute whether Cal.
 25 Ins. Code § 2695.8(b)(1) requires proration of the monthly amount from the first or last day of the
 month in which a collision occurs. *Id.* ¶¶ 6–13. Contrary to Defendant’s practice of not paying
 26 any prorated amount for the month in which the collision occurs, Plaintiffs argue that registration
 fees should be paid for the entirety of the month in which the collision occurs. *Id.* ¶¶ 10–12.
 27 Therefore, Plaintiffs’ theory of maximum recovery for the Regulatory Fees Class is one month’s
 worth of regulatory fees, on average \$13.76. *Id.* ¶ 12. Plaintiffs arrived at \$13.76 by computing
 the average regulatory fees owed in a full year, \$165.12, and dividing by 12 months. *Id.* ¶¶ 14–15.

28 ⁵ Plaintiffs’ estimation is based on 43,600 total loss-owned vehicles per year. Phillips Decl. ¶ 38.

1 among the Class Members and weighs in favor of approval of the settlement. *See, e.g., Churchill*
 2 *Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement where 45 of
 3 approximately 90,000 class members objected); *Rodriguez v. West Publ. Corp.*, Case No. CV05–
 4 3222 R, 2007 WL 2827379, at *10 (C.D. Cal. Sept. 10, 2007) (finding favorable class reaction
 5 where 54 of 376,301 class members objected).

6 * * *

7 After considering and weighing the above factors, the Court finds that the settlement
 8 agreement is fair, adequate, and reasonable, and that the settlement Class Members received
 9 adequate notice. Accordingly, Plaintiffs’ motion for final approval of the class action settlement is
 10 **GRANTED.**

11 **B. Attorneys’ Fees, Costs and Expenses, and Incentive Award**

12 In its unopposed motion and consistent with the Settlement Agreement, Class Counsel asks
 13 the Court to approve an award \$3,852,553.39 in attorneys’ fees and \$47,446.61 in costs. *See* Dkt.
 14 No. 164 at 10. Class Counsel also seeks service awards for the named plaintiffs: \$15,000 for
 15 Plaintiff Subbaiah, \$10,000 for Plaintiff Ventrice-Pearson, and \$5,000 for Plaintiff Perez. *See id.*

16 **i. Attorneys’ Fees & Costs**

17 **a. Legal Standard**

18 “In a certified class action, the court may award reasonable attorney’s fees and nontaxable
 19 costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). For a state
 20 law claim—like this one—state law also governs the calculation of attorneys’ fees. *See Vizcaino*
 21 *v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Nevertheless, the Court may still look to
 22 federal authority for guidance in awarding attorneys’ fees. *See Apple Computer, Inc. v. Superior*
 23 *Court*, 126 Cal. App. 4th 1253, 1264 n.4 (2005) (“California courts may look to federal authority
 24 for guidance on matters involving class action procedures.”). The two primary methods for
 25 determining reasonable fees in the class action settlement context are the “lodestar/multiplier”
 26 method and the “percentage of recovery” method. *Wershba v. Apple Computers, Inc.*, 91 Cal.
 27 App. 4th 224, 254 (2001).

1 Under the lodestar method, a “lodestar figure is calculated by multiplying the number of
2 hours the prevailing party reasonably expended on the litigation (as supported by adequate
3 documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.”
4 *In re Bluetooth*, 654 F.3d at 941. “[T]he established standard when determining a reasonable
5 hourly rate is the rate prevailing in the community for similar work performed by attorneys of
6 comparable skill, experience, and reputation.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
7 979 (9th Cir. 2008) (quotation omitted). Generally, “the relevant community is the forum in
8 which the district court sits.” *Id.* (citation omitted). And typically, “[a]ffidavits of the plaintiffs’
9 attorney and other attorneys regarding prevailing fees in the community, and rate determinations
10 in other cases ... are satisfactory evidence of the prevailing market rate.” *United Steelworkers of*
11 *Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990); *see also Schuchardt v. Law Off. of*
12 *Rory W. Clark*, 314 F.R.D. 673, 687 (N.D. Cal. 2016).

13 Under the percentage-of-the-fund method, twenty-five percent of a common fund is the
14 benchmark for attorneys’ fees awards. *See, e.g., In re Bluetooth*, 654 F.3d at 942 (“[C]ourts
15 typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing
16 adequate explanation in the record of any ‘special circumstances’ justifying a departure.”); *Six*
17 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Whether the
18 Court awards the benchmark amount or some other rate, the award must be supported “by findings
19 that take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

20 “Though courts have discretion to choose which calculation method they use, their
21 discretion must be exercised so as to achieve a reasonable result.” *In re Bluetooth*, 654 F.3d at
22 942. To guard against an unreasonable result, the Ninth Circuit has encouraged district courts to
23 cross-check any calculations under one method against those under another method. *Vizcaino*,
24 290 F.3d at 1050–51. Class Counsel is also entitled to recover “those out-of-pocket expenses that
25 would normally be charged to a fee paying client.” *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir.
26 1994) (quotations omitted).

b. Discussion

Class Counsel seeks \$3,852,553.39 in attorneys' fees and \$47,446.61 in costs for \$3.9 million total. *See* Dkt. No. 164 at 10. The records submitted to the Court reflect that Class Counsel incurred \$2,266,047.20 in attorneys' fees.⁶ Thus, the requested fee represents a lodestar multiplier of about 1.7. Class Counsel urges that its requested fees are reasonable under either the lodestar or percentage method. *See id.* at 13; Dkt. No. 178 at 5–7. Because this is a claims-made settlement, the Court will apply the lodestar method. *See Lowery v. Rhapsody Int'l, Inc.*, No. 16-cv-01135-JSW, 2021 WL 7448610, at *3 (N.D. Cal. Sept. 20, 2021) (“In a claims-made settlement, the lodestar method is typical.”).

Class Counsel's billing records reflect that they worked 3,378.8 hours totaling \$2,266,047.20 in fees. Timekeepers' hourly rates range from \$746 to \$1,000 for partners, \$381 to \$676 for associates, and \$180 to \$225 for staff and paralegals. *See* Dkt. No. 164 at 14; *see also* Dkt. No. 164-1 ¶ 42; Dkt. No. 164-2 ¶ 16; Dkt. No. 164-3 ¶ 55; Dkt. No. 164-4 ¶ 26; Dkt. No. 164-5 ¶ 11. These billing rates are in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation. *See, e.g., Carlotti v. ASUS Computer Int'l*, No. 18-cv-03369-DMR, 2020 WL 3414653, *5 (N.D. Cal. June 22, 2020) (finding hourly rates of \$950 to \$1025 for partners, \$450 to \$900 for other attorneys, and \$225 to \$275 for legal assistants reasonable); *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL 1047834, at *5 (N.D. Cal. March 17, 2017) (finding rates ranging from \$275 to \$1,600 for partners, \$150 to \$790 for associates, and \$80 to \$490 for paralegals reasonable).

However, having reviewed the billing records, the Court finds that the base lodestar calculation contains some inefficient and unreasonable time. *See Jankey v. Poop Deck*, 537 F.3d

⁶ This is an updated lodestar based on billing records submitted to the Court after the fee motion. In a status report, Class Counsel stated that the records reflect a total lodestar of \$2,275,113.95. *See* Dkt. No. 178 at 5. This appears to be inaccurate, and there were numerous discrepancies in the attorney declarations submitted in connection with the billing records. Accounting for all discrepancies and excluding costs, the Court calculates that the base lodestar reflected in the records is \$2,266,047.20.

1 1122, 1132 (9th Cir. 2008) (directing courts to exclude from a fee request any hours that are
 2 “excessive, redundant, or otherwise unnecessary”). First, the Court notes that five firms and
 3 thirty-two timekeepers worked on this case on Plaintiffs’ behalf. The records indicate that
 4 attorneys spent significant time discussing the case via intraoffice meetings, emails, and phone
 5 calls with co-counsel. The Ninth Circuit has indicated that the Court has discretion to discount
 6 such time. *See Terry v. City of San Diego*, 583 Fed. App’x 786, 790–91 (9th Cir. 2014)
 7 (permitting reductions for time counsel spent conferring among themselves and co-counsel editing
 8 each other’s briefs because this time could be considered duplicative).

9 The Court also has reservations about awarding fees for motions that amount to inter-firm
 10 rivalry that arose before separate cases were consolidated.⁷ Although undoubtedly valuable to the
 11 firms involved, it is hard to see how battles between the attorneys now collectively asking for fees
 12 benefited the Class. *See In re Washington Pub. Power Supply Sys. Sec. Litig.*, 779 F. Supp. 1063,
 13 1121 (D. Ariz. 1990) (noting that work on a motion for appointment of lead counsel was
 14 “undoubtedly of value to the [] firm” but “provided no measurable benefit to Class members”).
 15 Because of the described inefficiencies, the Court will apply a 5% reduction to the base lodestar.

16 Class Counsel requests a lodestar multiplier of 1.7. To decide whether to adjust a lodestar,
 17 the “foremost” consideration “is the benefit obtained for the class.” *In re Bluetooth*, 654 F.3d at
 18 942. Despite the inefficiencies described, the Court recognizes that Class Counsel obtained an
 19 excellent outcome for the class. The Sales Tax class will receive 100% of potential damages,
 20 while the Regulatory Fees class will receive 50% of potential damages under Plaintiff’s theory of
 21 liability. *See* Dkt. No. 164 at 17. On average, sales tax class members will receive more than
 22 \$2,000. *Id.* at 12. The expected distribution to the class is more than \$6 million. *See* Dkt. No.
 23 178 at 2. Further, Defendant will change its practices to address the allegations in this case, albeit

24 _____
 25 ⁷ For example, counsel for Plaintiffs Munoz and Ventrice-Pearson sought to dismiss *Subbaiah v.*
 26 *Geico*, No. 3:19-cv-08164-CRB (C.D. Cal.), deeming it a “copycat” action; they filed a motion to
 27 intervene in *Subbaiah* and a motion to appoint interim class counsel in this case. *See* Dkt. No. 38
 28 at 4. Counsel for Plaintiff Subbaiah then moved to intervene in this case and opposed the motion
 to appoint interim class counsel, arguing that the *Munoz* counsel had a conflict of interest. *See*
 Dkt. No. 56 at 3. Eventually, the cases were related and consolidated, and counsel agreed to file a
 consolidated complaint, withdraw the motion to appoint, and deem the motion to intervene moot.
See Dkt. Nos. 60, 66.

1 subject to several reservations, including one contingent on future legal developments. *See* SA
2 § 60; Dkt. No. 164 at 12. Plaintiffs’ counsel litigated skillfully and professionally on a fully
3 contingent basis with no guarantee of recovery. Based purely on the excellent outcome for the
4 class and the high average recovery, the Court will apply a more modest multiplier than requested
5 of 1.2, which brings the fee award to \$2,583,293.81.

6 Cross-checking the requested fees against the monetary benefit being paid to the Class
7 further supports awarding a lower fee than requested. The requested fee comprises about 36% of
8 the estimated total cash available to the class (\$10.63 million) *if* attorneys’ fees and costs are
9 included in the denominator. *See* Dkt. No. 178 at 7. But if attorneys’ fees and costs are excluded,
10 the requested fee comprises about 57% of the benefit. The Ninth Circuit has not set a bright-line
11 rule on this question for claims-made settlements, but it is clear to the Court that at minimum, the
12 actual claims should not be ignored in assessing the requested fees. *See, e.g., Lowery v. Rhapsody*
13 *Int’l, Inc.*, No. 16CV01135JSWJSC, 2021 WL 7448610, at *8 (N.D. Cal. Sept. 20, 2021); *Reyes v.*
14 *Bakery & Confectionery Union & Indus. Int’l Pension Fund*, 281 F. Supp. 3d 833, 860–61 (N.D.
15 Cal. 2017). The reduced fee of \$2,583,293.81 is about 38% of the actual estimated monetary
16 benefit of \$6,200,000 plus \$530,000 in estimated administration costs. Although higher than the
17 benchmark, the Court finds the adjusted amount reasonable, again given the outcome for the class
18 and the high average recovery. Overall, the cross check supports a lower fee than requested.

19 For the above reasons, the Court **GRANTS** attorneys’ fees in the amount of
20 \$2,583,293.81.

21 Regarding Plaintiffs’ counsel’s costs, counsel is entitled to recover “those out-of-pocket
22 expenses that would normally be charged to a fee paying client.” *See Harris*, F.3d 16 at 19.
23 Plaintiffs’ counsel has provided breakdowns of expenses in this case and states that counsel
24 incurred \$47,446.61 in costs. *See* Dkt. No. 164 at 23. The Court finds that the requested expenses
25 are reasonable and **GRANTS** the request for costs in the amount of \$47,446.61.

26 * * *

27 The Court accordingly awards \$2,583,293.81 in attorneys’ fees and \$47,446.61 in costs,
28 for a total of \$2,630,740.42.

1 **ii. Incentive Awards**

2 Plaintiffs’ counsel requests an incentive award of \$15,000 for Plaintiff Subbaiah, \$10,000
3 for Plaintiff Ventrice-Pearson, and \$5,000 for Plaintiff Perez. *See* Dkt. No. 164 at 10.

4 District courts have discretion to award incentive fees to named class representatives. *See*
5 *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). “Service awards as high as
6 \$5,000 are presumptively reasonable in this judicial district.” *See Wong v. Arlo Techs., Inc.*, No.
7 5:19-CV-00372-BLF, 2021 WL 1531171, at *12 (N.D. Cal. Apr. 19, 2021). However, the Court
8 shares the Ninth Circuit’s concern that “if class representatives expect routinely to receive special
9 awards in addition to their share of the recovery, they may be tempted to accept suboptimal
10 settlements at the expense of the class members whose interests they are appointed to guard.” *See*
11 *Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003); *Radcliffe v. Experian Information Sols.*
12 *Inc.*, 715 F.3d 1157, 1163–64 (9th Cir. 2013) (noting that the Ninth Circuit has “expressed
13 disapproval of these incentive agreements” and that “in some cases incentive awards may be
14 proper but . . . awarding them should not become routine practice”). The Ninth Circuit has
15 cautioned that “district courts must be vigilant in scrutinizing all incentive awards to determine
16 whether they destroy the adequacy of the class representatives” *Radcliffe*, 715 F.3d at 1165
17 (quotations omitted). This is particularly true where “the proposed service fees greatly exceed the
18 payments to absent class members.” *Id.*

19 The Court must “evaluate the propriety of requested incentive payments’ by considering,
20 among other factors, ‘the actions the plaintiff has taken to protect the interests of the class, the
21 degree to which the class has benefitted from those actions, the amount of time and effort the
22 plaintiff expended in pursuing the litigation,’ and any financial or reputational risks the plaintiff
23 faced.” *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 786 (9th Cir. 2022) (quoting
24 *Roes*, 944 F.3d at 1057).

25 Class Counsel states the amount sought per named Plaintiff is proportional to the time each
26 Plaintiff spent. *See* Dkt. No. 164 at 24. Plaintiff Subbaiah submitted a detailed declaration,
27 records of her correspondence with GEICO, and a timesheet of her activities in this case
28 amounting to 174 hours. *See* Dkt. No. 164-6 (“Subbaiah Decl.”), Exs. A–G. Plaintiff Subbaiah’s

1 records show she devoted a significant amount of time and energy to this case. *See generally*
2 Subbaiah Decl., Exs. F, G; Dkt. No. 164 at 25 n.4 (noting Class Counsel have “rarely encountered
3 a named plaintiff as actively and meaningfully involved in litigating class action claims”). After
4 receiving an offer letter from GEICO for her total loss vehicle, Plaintiff Subbaiah conducted
5 research and reached out to law firms. *See* Subbaiah Decl. ¶¶ 3–16, Ex. F. Throughout the
6 litigation, Plaintiff Subbaiah was actively involved: She communicated with counsel extensively,
7 gathered and reviewed documents, and attended mediation and hearings. *See id.*, Ex. G; Dkt. No.
8 164 at 24–25. The level of detail and effort in her communications with GEICO, which were used
9 in this case and subject to a motion to seal, are one example of how Plaintiff Subbaiah’s actions
10 have benefited the class. *See* Subbaiah Decl. ¶ 10, Exs. A, C, E.

11 At the Court’s request, Plaintiffs Ventrice-Pearson and Perez filed supplemental
12 declarations describing their involvement in this case. *See* Dkt. Nos. 175-1, 175-2. Plaintiff
13 Ventrice-Pearson states that she spent an estimated 65 hours on this case, also reviewing
14 documents, responding to discovery, and participating in negotiations. *See* Dkt. No. 175-1 ¶ 13.
15 As Class Counsel points out, Perez’s case settled at an earlier stage compared to Plaintiff
16 Subbaiah’s and Ventrice-Pearson; Plaintiff Perez estimates that she spent 40 hours on this case.
17 *See* Dkt. No. 175-2 ¶ 10; Dkt. No. 164 at 25.

18 While the Court is persuaded that the named Plaintiffs, particularly Plaintiff Subbaiah,
19 contributed meaningfully to this case, \$15,000 is “quite high” for a service award. *See Harris v.*
20 *Vector Marketing Corp.*, No. 08-cv-5198-EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012)
21 (“Several courts in this District have indicated that incentive payments of \$10,000 or \$25,000 are
22 quite high and/or that, as a general matter, \$5,000 is a reasonable amount.”). A lower service
23 award would be more proportionate to the amount going to class members and in line with other
24 awards in this district. *See Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2015 WL 3863625,
25 at *9 (N.D. Cal. June 22, 2015) (rejecting \$11,000 incentive award where class members were
26 estimated to receive between \$600 and \$4,000); *Ko v. Natura Pet Prod., Inc.*, No. C 09-02619
27 SBA, 2012 WL 3945541, at *15 (N.D. Cal. Sept. 10, 2012) (awarding \$5,000 incentive award for
28 50–100 hours in contributions over two-year litigation).

1 Thus, the Court finds that awards of \$10,000 to Plaintiff Subbaiah, \$7,500 to Plaintiff
2 Ventrice-Pearson, and \$5,000 to Plaintiff Perez are adequate and appropriate to compensate them
3 for their efforts.


4 **III. CONCLUSION**

5 Accordingly, the Court **GRANTS** the motion for final approval of class action settlement,
6 Dkt. No. 165, and **GRANTS IN PART AND DENIES IN PART** the motion for attorneys' fees,
7 costs, and incentive award, Dkt. No. 164. The Court awards \$2,583,293.81 in attorneys' fees,
8 \$47,446.61 in costs, and a \$22,500 service award to the named Plaintiffs.

9 The parties and settlement administrator are directed to implement this Final Order and the
10 settlement agreement in accordance with the terms of the settlement agreement. The parties are
11 further directed to file a short stipulated final judgment of two pages or less within 7 days from the
12 date of this order. The judgment need not, and should not, repeat the analysis in this order.

13 **IT IS SO ORDERED.**

14 Dated: 3/15/2023

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16 HAYWOOD S. GILLIAM, JR.
17 United States District Judge
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United States District Court
Northern District of California