SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARY HUGHES, an individual and KEVIN SHENKMAN, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AUTOZONE PARTS, INC., a Nevada Corporation; AUTOZONE, INC., a Nevada Corporation, AUTOZONE.COM, INC., a Corporate entity of unknown origins; and DOES 1 through 100,

Defendants.

Case No.: BC631080

ORDER GRANTING FINAL APPROVAL AND PERMITTING SERVICE AWARDS

Date: February 21, 2020
Time: 9:00 a.m.
Dept.: SSC 17

I. INTRODUCTION

This is a consumer class action lawsuit concerning a loyalty rewards program. As is more fully set forth in the Court's Order of October 16, 2019, Defendant AutoZone[1] offered a reward program under which customers could earn $20 Rewards (money that may be spent in store) after making five purchases of $20 or more each; a Credit was earned with each $20 purchase. Initially there were no time limits for accumulating the five Credits required to earn a Reward and no time limit by which Rewards had to be used. AutoZone termed this the "5/20/20 plan."

After married couple Mary Hughes (Hughes) and Kevin Shenkman (Shenkman) (jointly, Plaintiffs) signed up for and began using Defendant's reward program, Defendant eliminated the 5/20/20 plan when it converted all reward plans to a nationwide plan. Customers then had 12 months in which to accumulate five Credits and three months to use a Reward. This plan is referred to as the "5 in 12/20/20/3 plan."

As a consequence of the conversion, some of the Credits Plaintiffs had accumulated became valueless. AutoZone contends that it retained the right to change the terms and conditions of the reward program at any time without notice, but that it also provided notice to all reward program members. Plaintiffs disagree, alleging that a term allowing for unilateral change of terms without notice is unconscionable and that, in any event, no notice was provided.

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[1] Defendants AutoZone Parts, Inc., AutoZone, Inc., and AutoZone.com, Inc. are jointly referred to in the singular here, as either Defendant or AutoZone.

Plaintiffs allege claims for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, Violation of the Consumer Legal Remedies Act, Violation of the False Advertising Act, and Violation of the Unfair Competition Law. In July 2018, this Court granted class certification on the Breach of Contract/Implied Covenant, and Unfair Competition claims as to the following subclasses:

Subclass 1 All persons who: (1) were enrolled in a 5/20/20 plan through an AutoZone store (and not online) in California at the time of the National Plan Conversion; (2) made purchase(s) of over $20 from AutoZone in California using their Rewards account on or before July 31, 2014; and (3) whose Reward(s) and/or Reward Credit(s) earned through the purchase(s) on or before July 31, 2014 were deemed expired and never reinstated by AutoZone.

Subclass 2 All persons who: (1) were enrolled in a 5/20/20 plan through an AutoZone store (and not online) in California at the time of the National Plan Conversion; (2) made purchase(s) of over $20 from AutoZone in California using their Rewards account after July 31, 2014; and (3) whose $20 Reward(s) and/or Reward Credit(s) earned through the purchase(s) after July 31, 2014 were deemed expired and never reinstated by AutoZone. Subclass 2 was not certified as to Breach of Contract or Breach of the Implied Covenant but solely as to Unfair Competition.

The distinction between class members who made purchases before and after July 31, 2014, was meant to account for potential differences among class members regarding

notice of conversion to the national plan, which AutoZone began notifying Rewards Members about in August 2014. In November 2018, the Court approved the summary and long form notices and notice plan. Notice was thereafter provided to the class.

In January 2019, AutoZone filed a motion for summary adjudication of the three claims on which certification had been granted. The matter was fully briefed. At the April 17, 2019 hearing, the Court heard oral argument and highlighted certain areas for further briefing. The hearing was continued and additional briefing was filed, after which the matter was taken under submission. Shortly thereafter the parties requested that the Court not issue an order as they had scheduled a mediation. Following some additional discovery and an extension of the time by which the Court would issue an order on the pending motion for summary adjudication, the parties were able to finalize a settlement.

A hearing was conducted on October 16, 2019 at which time the Court preliminarily approved the settlement conditioned upon certain modifications to the notice plan and long form notice. These conditions were met.

The Court set February 21, 2020 as the date for final approval of the settlement, and for a hearing on attorneys' fees and incentive payments. On the Court's own motion the application for fees was continued to March 24, 2020 due to calendar congestion. Now before the Court are the motion for final approval and plaintiffs' request for an incentive award, both of which are addressed in this document.

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II. DISCUSSION

A. TERMS OF THE SETTLEMENT

1. SETTLEMENT CLASS DEFINITION

The Settlement Agreement contains the following defined terms:

- "Class Members" means any member of either subclass, as certified by the Court on July 20, 2018 (and as set for the above). Settlement Agreement ¶II.F
- The class size is estimated to be in the millions. Certification Order at 9:11.

2. TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The following relief will be provided within 30 days of the Effective Date:
    - All of the Class Members' expired $20 Rewards will be reinstated – which AutoZone represents will result in reinstating 918,788 $20 Rewards;
    - All of the Class Members' expired Credits will be converted to Rewards, using the following formula:
        - Class Members with one or two Credits which expired will receive one $5 Reward, which AutoZone represents will result in AutoZone issuing 3,136,952 $5 Rewards;
        - Class Members with three or four Credits which expired will receive one $10 Reward, which AutoZone represents will result in AutoZone issuing 1,271,858 $10 Rewards; and

- Class Members with 5 or more Credits which expired will receive one $15 Reward, which AutoZone represents will result in AutoZone issuing 142,576 $15 Rewards.

Settlement Agreement, ¶III.a.b.

- There is no claims requirement. The reinstated $20 Rewards and the Credits that are converted into Rewards will automatically be put into members' Rewards accounts without members having to submit a claim. *Id.* at ¶III.c.
- The Rewards will be valid for one year. *Id.* at ¶III.d.
- The Awards are not transferable and may not be used for gift cards, loan-a-tool products, or products ordered on-line for pick-up in stores.
- AutoZone will pay for all costs of notice and settlement administration as well as a reasonable incentive award to Plaintiffs and reasonable attorney's fees and costs to Class Counsel based on the lodestar methodology. The parties agreed not to negotiate the amount of fees, expenses, and awards until after all other terms were agreed to and memorialized. The Parties agreed that the Court shall decide the amounts of these payments in the event the parties could not reach an agreement. *Id.* at ¶IV.
- Within 10 days after the Effective Date, AutoZone will pay the fees, expenses, and awards as directed by the Court. *Id.* at ¶IV.

- The proposed Class Notice contains caps on the costs and incentive awards that the parties have agreed to and indicates the amount of costs and fees that will be sought ($125,000 for costs and $6,625,000 for fees).
- The settlement administrator is Postlethwaite & Netterville (P&N), the same administrator that provided the class with notice of certification. *Id.* at ¶II.D.

B. ANALYSIS OF SETTLEMENT AGREEMENT

1. Standards for Final Fairness Determination

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) "If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment." (Cal. Rules of Court, rule 3.769(h).)

"In a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60, internal quotation marks omitted; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (*Wershba*), disapproved on another ground in *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 [trial court must "scrutinize the proposed settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned," internal quotation marks omitted].)

"The burden is on the proponent of the settlement to show that it is fair and reasonable. However 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.'" (*Wershba, supra,* 91 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 (*Dunk*).)

Notwithstanding an initial presumption of fairness, "the court should not give rubber-stamp approval." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (*Kullar*).) "Rather, to protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished." (*Ibid.*) In that determination, the court should consider factors such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and 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." (*Id.* at 128.) "Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91 Cal.App.4th at pg. 245.)

Nevertheless, "[a] settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at pg. 250.)

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2. Does a presumption of fairness exist?

a. Was the settlement reached through arm's-length bargaining? This settlement is the result of nearly three years of litigation and motion practice followed by a day of mediation before Hon. Leo S. Papas (Ret.), and continued negotiations thereafter to finalize terms. Yohalem Declaration, ¶ Yohalem Declaration, ¶¶ 8, 9. There is no indication the settlement is the product of anything other than an "arm's length" negotiation.

b. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Before finally entering into a settlement agreement, the parties conducted sufficient discovery to have a command of the facts of this litigation as well as the strengths and weaknesses of Plaintiffs' claims. Pre-filing investigation involved research into the number of stores and customers involved and legal research into the issues. Plaintiffs served discovery shortly after the case was filed, and successfully opposed a demurrer. In early summer 2017, AutoZone produced a small number of documents and, following an Informal Discovery Conference, it produced nearly 400,000 documents. Plaintiffs engaged a third-party vendor for assistance with document review. Plaintiffs took the depositions of two AutoZone employees and AutoZone took the depositions of both plaintiffs. Following class certification, notice was provided to the class. Plaintiffs took the deposition of AutoZone's person most knowledgeable. A motion for summary judgment was filed and fully briefed, and oral argument took place, with the Court taking the matter under submission. It was only upon

settlement in principle that the motion was withdrawn. Yohalem Declaration ISO Fees, ¶¶30-67.

c. Is counsel experienced in similar litigation? Yes. Evidence presented at the time of class certification was sufficient for the Court to find that Class Counsel is experienced in similar litigation. Declaration of Seth Yohalem dated March 21, 2019, ¶¶ 38-48.

d. What percentage of the class has objected? As of January 28, 2020, P&N has not received any objections. Declaration of Ryan Aldridge, ¶15.

CONCLUSION: The settlement is entitled to a presumption of fairness.

3. Is the settlement fair, adequate, and reasonable?

a. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar, supra,* 168 Cal.App.4th at pg. 130.) Here, Class Counsel admits that evaluating the strength of the claims was complicated because its facts "did not fall into a familiar fact pattern or have an established track record of success." Yohalem Declaration ISO Fees, ¶¶ 109-110. The most analogous cases involve airline frequent flier programs, the majority of which were resolved in favor of defendants. Thus, although Plaintiffs believed in the merits of their case, it had significant risks, including losing on summary judgment or trial, or winning and facing an appeal by AutoZone. *Id.* at ¶¶ 111-113. In a case that Plaintiffs consider analogous, an airline stopped honoring coupons for free in-flight drinks that came with a business class ticket unless they were used on that same flight;

previously it had allowed customers to save drink coupons for later flights. The settlement required the airline to issue replacement coupons to class members who filed a claim, which were transferable and valid for one year, and provided for injunctive relief as to how the airline handled expiration date controversies in the future. Because the settlement provided "essentially complete relief for the class," the court called it a "model of an adequate settlement." *In re Southwest Airlines Voucher Litigation* (7th Cir. 2015) 799 F.3d 701, 711. Here, while the Settlement Agreement does not provide any injunctive relief nor does it change the terms of AutoZone's rewards program, given the uncertain outcomes, the compromise settlement is within the ballpark of reasonableness: Class Members will automatically receive the benefits of this settlement when the new Rewards are placed in their Reward Member accounts.

b. Risk, expense, complexity and likely duration of further litigation. While substantial litigation had already taken place and while the case settled three months short of trial, the future risks avoided by this settlement are nevertheless real. As Plaintiffs' acknowledge, these risks included the Court potentially granting AutoZone's then-pending motion for summary adjudication, loss at trial, loss on appeal, or decertification. Motion at 4:17-21; Yohalem Declaration, ¶15.

c. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive

motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

d. Amount offered in settlement. This settlement provides benefit to Class Members in that it restores to them a significant portion of the face value of what they lost when Credits and Rewards expired, although it also requires them to use the reinstated Rewards within a fixed period of time (one year) under the terms of the original rewards program.

e. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, the case had been litigated and the parties had conducted discovery sufficient to value the case for settlement purposes.

f. Experience and views of counsel. The settlement was negotiated by Class Counsel who, as indicated above, is experienced in class action litigation.

g. Presence of a governmental participant. This factor is not applicable here.

h. Notice to and reaction of the class members to the proposed settlement. P&N maintains a database of 4,799,465 class members. AutoZone provided the class data which consisted of 371,389 records with e-mail addresses, 1,752,896 records with a mailing but no e-mail address, 2,666,142 records with a phone number but no e-mail or mailing address, and 9,038 records with no contact information. P&N performed reverse look-up analysis using telephone numbers to obtain mailing addresses for an additional 1,295,549, which were used to obtain an additional 2,037.814 e-mail addresses. The e-mail addresses were then subjected to validation.

P&N initiated an email notice campaign to those class members for whom AutoZone provided email addresses and which P&N validated. On November 25, 2019, email notice was sent to 2,606,372 email addresses representing 1,767,485 class members. The email consisted of the Summary Notice and with a link to the case website: www.AZRewardsLitigation.com. Aldridge Declaration, ¶¶ 5, 7-9 and Exhibit A. As of January 23, 2020, P&N's records show that emails were successfully delivered to 1,671,214 class members, or 34.8% of the class.

On December 1, 8, 15, and 22, 2019, P&N caused summary notice to be published for four Sundays in the *Los Angeles Times, San Francisco Chronical, San Diego Union Tribune, Orange County Register, Sacramento Bee, Redding Record Searchlight, and Press-Enterprise*, the combined Sunday circulation of which is 1,594,444. Aldridge Declaration, ¶10 and Exhibit B.

On December 2, 2019, a press release was distributed over PR Newswire California and California Hispanic Newslines in English and Spanish to media outlets across the state. The release was picked up 288 times with a total potential audience of 54,941,721. Aldridge Declaration, ¶11 and Exhibit C.

P&N has operated a website with details of the settlement, including the Long Form Notice in English and Spanish (Exhibit D), and which contains interactive features allowing class members to view their expected settlement Reward and to see a list of stores that participated in the 5/20/20 version of the Reward Program. P&N also maintained a mailing address for the settlement program. Aldridge Declaration, ¶¶ 12, 13.

In addition to these forms of notice, to the best of AutoZone's Director of Marketing and Customer Relationship Management's knowledge, AutoZone placed Short Form Notice in the entry-door windows of all California stores

that participated in the 5/20/20 program, which were in place from December 2, 2019, to January 23, 2020. Declaration of Bernadette Pawlak, ¶¶2, 3.

Section 19 of the Long Form Notice tells class members how and when to object, by sending objections to the Settlement Administrator on or before January 23, 2020. As of January 28, 2020, P&N had not received any objections. Aldridge Declaration, ¶15.

Class members were required to exclude themselves by February 26, 2019, following class certification. Four persons did so. Aldridge Declaration, ¶16 and Exhibit E.

CONCLUSION: The Court finds that the notice was adequate and conforms to due process requirements, and further finds that the settlement is "fair, adequate, and reasonable."

C. ATTORNEY FEES AND COSTS

The issue of fees and costs will be determined by way of a separate motion, set for hearing March 24, 2020.

D. SETTLEMENT ADMINISTRATION COSTS

Settlement administrator P&N indicates that the costs and fees associated with administering this settlement will be $192,348. The class was provided with notice that administration may cost up to $192,597 and none objected. Given the size of the class and the cost of the numerous ways that notice was provided to the class, the requested $192,348 appears to be reasonable and is awarded in full.

E. INCENTIVE AWARD TO CLASS REPRESENTATIVE

"While there has been scholarly debate about the propriety of individual awards to named plaintiffs, '[i]ncentive awards are fairly typical in class action cases.' (Citations.)

These awards 'are discretionary, [citation], and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.' (Citation.)" *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394 (*Cellphone Termination Cases*)

> An incentive award is appropriate " 'if it is necessary to induce an individual to participate in the suit[.]' ... [Citation.]" (*Id.* at p. 804.) "[C]riteria courts may consider in determining whether to make 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. [Citations.]" (*Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299.) These "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit. (See *Dornberger v. Metropolitan Life Ins. Co.* (S.D.N.Y. 2001) 203 F.R.D. 118, 124–125.)
>
> Id. at 1394-1395 [113 Cal.Rptr.3d 510].)

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 $5,000 service awards were upheld where the average class member received $4,300; 1.16 times the average payout. In *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 (*Clark*) $25,000 incentive awards where class members received an average of $561.44 were reversed on appeal both because of the "enormous disparity in recovery" (44 times the average payout) and because of a lack of evidence to support the awards. In *Cellphone Termination Cases*, $10,000 incentive awards to each of four class representatives was affirmed on appeal, in a case where class members received approximately half of what they had been charged in early termination fees (example: $87.50); the awards were approximately 114 times the average payout. The evidence there

was that each of the class representatives had produced documents, answered interrogatories, submitted to deposition, testified at trial or arbitration, and most had flown across the country to do so; an incentive was especially appropriate as to the class representative who cleaned houses for a living. *Cellphone Termination Cases*, *supra*, 186 Cal.App.4th at 1395.

It is represented that Mr. Shenkman spent 107.1 hours on this case and Ms. Hughes spent a total of 44.2 hours on this case over the three and a half years it has been pending. Both plaintiffs are lawyers with experience litigating class actions. Mr. Shenkman represents that his current billing rate is $815 per hour. Ms. Hughes' current billing rate is $740 per hour. Multiplying these rates by the number of hours worked on this matter yields a total of $119,994.50. While they do not seeking to recover the full value of this amount they do seek $30,000 each, which they represent they will donate to charity

In declarations filed at the time of preliminary approval, Plaintiffs provided details about their contributions to this litigation. Ms. Hughes states that she: took seriously her obligation as a fiduciary for the class; carefully reviewed pleadings; collected and reviewed documents, prepared for an attended her deposition; reviewed, revised, and executed multiple declarations; and regularly communicated with Mr. Shenkman, who would convey her communications to Class Counsel. Ms. Hughes states that they risked being liable for AutoZone's costs if they did not prevail in this action, although she acknowledges that it is unusual for a class representative to bear costs. She avers that she and her husband risked reputational risk since they regularly litigate in the complex division, and that time they have devoted to this case took them away from time they otherwise could have spent on their own cases. All told, Ms. Hughes has devoted approximately 44.2 hours to this litigation. Declaration of Mary Hughes dated September 23, 2019, ¶¶ 2, 3, 8 – 10, and 13 -17.

Mr. Shenkman provides similar information. In addition to performing tasks similar to those outlined by Hughes, Mr. Shenkman states that he attended mediation. He calculates that he has spent approximately 97.1 hours on this litigation. Declaration of

Kevin Shenkman dated September 23, 2019, ¶¶ 2, 3, 8-10, 12, 15-17. In a supplemental declaration filed in support of this motion, Shenkman indicates that he has spent additional hours on this litigation for a total of 107.1. Declaration of Kevin Shenkman dated September 27, 2020.

The argument that plaintiffs' service award should be measured as a fraction of their lost earning (Motion at 16:10-12) or because they have experience in class actions as lawyers, is not well taken. Hughes and Shenkman were not approved as class counsel and should not be indirectly remunerated for legal work they did on behalf of the class. Cf. *Rudgayzer v. Yahoo!* (N.D. Cal. Nov. 9, 2012) 2012 U.S.Dist.Lexis 161302 at *11 (Pro se plaintiff may only represent himself). Plaintiffs' hourly rates and references to the value of their work performed at such rates is therefore disregarded as irrelevant.

In these circumstances, and given that many class members will receive only one $10 Reward that expires in a year,[2] a cash award of thousands of times that much is unreasonable. *Clark* at 805-806.

The Court credits Plaintiffs' testimony that they undertook an actual risk because, unlike many plaintiffs in class actions, they could have been liable for costs that could have been collected against them. It is also acknowledged that because of their training and experience Plaintiffs understood their obligations to the class and undertook to diligently prosecute the action for the benefit of the class. Little risk is shown, however, and there is little showing that an incentive was needed to induce them to participate in this case. Their declarations aver that when they learned AutoZone had altered the terms of its Rewards Program, they were upset, thought themselves well-suited to pursue a class action, and reached out to Mr. Yohalem (a law school classmate of Mr. Shenkman) and suggested he pursue a class action. Hughes Dec. ¶¶ 5-7; Shenkman Dec. ¶¶ 5-7. There is no evidence of notoriety; it does not appear that this litigation has garnered any press

[2] AutoZone argues that because the Rewards member was Hughes, Shenkman is not a member of the class and cannot receive any Reward. Whatever the merits of this argument may be, it was not made by AutoZone on class certification and is not considered here.

coverage that would be harmful to Plaintiffs' reputations, nor is there any reason to believe that Plaintiffs' involvement in this litigation has or would likely cause reputational harm to them among the complex litigation bench. It does not appear that either plaintiff encountered personal difficulties of the type that sometimes are inflicted on plaintiffs who pursue claims against, for example, an employer. Nor is there a viable claim of loss of income needed for their own support, as plaintiffs propose that they give whatever award they receive to charities.

To the extent an "incentive" is justified because the time they devoted to this action is time they could otherwise have devoted to work for paying clients or in furtherance of their own cases, the Court is not persuaded. Reply at 1:25-27. The total amount of time spent over the three and a half years that this action has been pending is modest. To the extent it consisted of legal work it is properly disregarded. Ms. Hughes states she spent 6.5 hours in discussions of strategy and tactics and 18.5 hours on review research, offer of comments, and revising court documents. These appear to be legal tasks rather than ones even the most diligent of class representatives would customarily undertake. The time spent on tasks any class representative would undertake were the attendance at deposition and responding to discovery, totaling 13.4 hours. In addition, Hughes spent 5.8 hours reviewing key documents and depositions. The Court infers this to mean review of her own transcript, among other things. Ms. Hughes thus spent a total of 44.2 hours, of which 19.2 were in attending to tasks any class representative would take, over three and a half years.

Mr. Shenkman states he spent 107.1 hours, of which he spent 23.6 hours performing research and on court filings, 13.5 hours on legal strategy, 3.5 hours reviewing and commenting on the fee motion and 2.5 hours reviewing and commenting on the final approval motion. See Shenkman Supp. Dec. His nonlegal tasks included attending hearings, depositions, mediation, collecting documents, and reviewing key documents and depositions. This took 60 hours over approximately three and one half years. The time devoted to this litigation that could otherwise have been devoted to their law practice is

not different than what is encountered by any individual who elects to be a class representative and must balance class representative duties with work and personal life

Given the time spent and also recognizing that the evidence is that Plaintiffs did appropriately discharge their obligations to the class and also took a real risk that they would be responsible for costs in this case, an incentive award of $15,000 ($7,500 each) is approved.

III. CONCLUSION AND ORDER

The Court hereby:

(1) Grants final approval of the settlement as fair, adequate, and reasonable;

(2) Awards **$7,500** each to Hughes and Shenkman as incentive awards;

(3) Awards **$192,348** in settlement administration costs to P&N.

The Motion for Final Approval, which was lodged conditionally under seal, will remain so until the time of the hearing on the Motion for Fees. The Motion to Seal, which concerns documents filed in both motions, will be heard concurrently with the fee motion on March 24, 2020.

Dated: 02/21/2020

MAREN E. NELSON
Judge of the Superior Court